

STB FD 32760

5-28-98

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Item No. _____

Page Count _____

83805



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 23, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

VIA AIRBORNE EXPRESS

Re: Finance Docket No. 32760, Union Pacific Corp., et al--Control and Merger--
Southern Pacific Rail Corp., et. al.

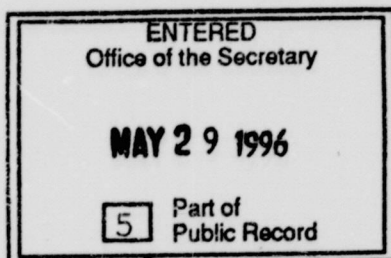
Dear Secretary Williams:

Enclosed for filing in the above-captioned docket are the original and twenty copies of the State of Texas' Request to Participate in Oral Argument. I have also enclosed a 3.5 - inch floppy diskette formatted for WordPerfect 5.1.

Thank you for your courtesies in this matter.

Sincerely,

DAN MORALES
Attorney General of Texas



Amy R. Krasner

AMY R. KRASNER
Assistant Attorney General
Antitrust Section
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
(512) 463-2185
(512) 320-0975 [FAX]

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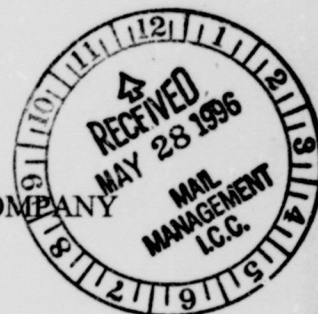
BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY
AND MISSOURI PACIFIC RAILROAD COMPANY

-- CONTROL AND MERGER --

SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY
COMPANY, SPCSL CORP. AND THE DENVER AND
RIO GRANDE WESTERN RAILROAD COMPANY



STATE OF TEXAS REQUEST TO PARTICIPATE IN ORAL ARGUMENT

In accordance with the Surface Transportation Board's Decision No. 36 in this proceeding, the State of Texas, by and through Dan Morales, Attorney General of Texas, hereby files its Request to Participate in Oral Argument and requests ten minutes of oral argument scheduled for July 1, 1996.

The State of Texas will address the disproportionate amount of parallel tracks in Texas, the unique situation of shippers along the Texas Gulf Coast and the effects of increased market concentration in Texas, if the UPSP merger is approved, as exemplified by the reduction of rail carrier options at the Texas-Mexican gateways.

The State of Texas opposes the proposed merger, but makes no comments on the responsive applications or any request for conditions.

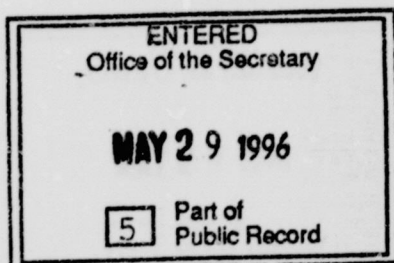
DATED this 22nd day of May, 1996.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

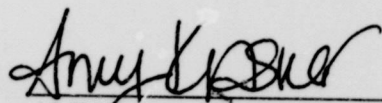
LAQUITA A. HAMILTON
Deputy Attorney General for Litigation



THOMAS P. PERKINS, JR.
Assistant Attorney General
Chief, Consumer Protection Division

MARK TOBEY
Assistant Attorney General
Deputy Chief for Antitrust

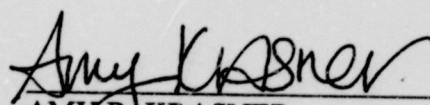
REBECCA FISHER
Assistant Attorney General
Assistant Deputy Chief for Antitrust



AMY R. KRASNER
Texas Bar No. 00791050
Assistant Attorney General
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(512) 320-0975 [FAX]

Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument has been sent via Airborne Express to Honorable Vernon A. Williams, Secretary of the Surface Transportation Board, and by regular mail to all parties on the Restricted Service List and Parties of Record this 22nd day of May, 1996.



AMY R. KRASNER
Assistant Attorney General

STB FD

32760

9-26-96

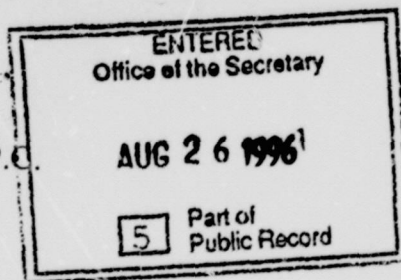
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August 21, 1996

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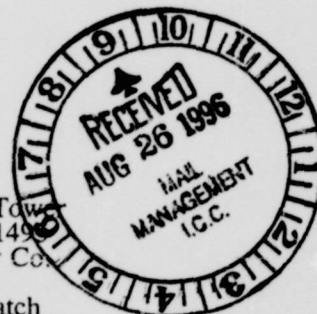
The Honorable Orrin G. Hatch
131 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Robert Bennett
431 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable James V. Hansen
2466 Rayburn House Office Building
Washington, D.C. 20510

The Honorable Enid Greene
515 Cannon Building
Washington, D.C. 20510

The Honorable William H. Orton
440 Cannon Building
Washington, D.C. 20510



RE: Pending UP/SP merger -- anticompetitive impact on Railco, Inc.

Ladies and gentlemen:

I received no reply to my July 29, 1996 letter. I attach a copy of that letter for your review. On August 12, 1996 the Surface Transportation Board has issued its written opinion approving the merger between Union Pacific Railroad Company and Southern Pacific Transportation Company, apparently without addressing Railco's concerns.

Railco respectfully requests written confirmation that the merger will not affect Railco's access to coal markets, and that Utah Railway will continue to have the same access to Railco's loadout facility as it has to Railco's competitors including Savage's loadout facility. If Railco is unable to obtain written confirmation to that effect, it may be necessary for Railco to file suit for declaratory and other relief. However, Railco would greatly prefer to resolve this matter outside of the court system. I look forward to your reply.

Sincerely,

F. Mark Hansen
F. Mark Hansen

Item No. _____

Page Count 3

2341-1.002

Aug # 20

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July 29, 1996

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Antitrust Division, Transportation Section
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RE: Pending UP/SP merger -- anticompetitive impact on Railco, Inc.

Ladies and gentlemen:

I represent Railco, Inc. Railco owns and operates a coal loadout facility just south of Price, Carbon County, Utah. Railco's loadout is on the same railroad spur and within shouting distance of a similar loadout owned by Savage Industries, Inc.

On January 17, 1996, Union Pacific, Southern Pacific and Utah Railway entered into a Settlement Agreement (the Utah Railway Agreement), which provided in part:

I. Trackage Rights

c) UTAH shall have the right in common with UP/SP to serve the Savage Industries, Inc. Savage Coal Terminal coal loading facility located on the so-called CV Spur near Price, Utah.

2. **Additional Coal Mine Access**
 - a) In addition to the coal mine access granted in Section 1.c), UP/SP also grant UTAH access to Cyprus Amax' Willow Creek Mine adjacent to the SP main line near Castle Gate, Utah
4. **Term**

... the grants of rights under Sections 1 and 2 shall be effective only upon UP's acquisition of control of SP.

On its face the Utah Railway Agreement gives Utah Railway access rights to the Savage loadout but not to the Railco loadout. This would give Savage a virtual monopoly for the business of all coal producers using Utah Railway. This competitive advantage could eventually lead to Railco's demise.

By letter dated March 12, 1996, counsel for Railco notified Union Pacific of this concern, and asked that the Utah Railway Agreement be modified to allow Utah Railway access to the loadout facilities of both Savage and Railco. Union Pacific did not respond. On or about March 21, 1996, Railco filed and served its Notice of Opposition to Merger and Intent to Participate in Proceedings (attached and incorporated here by reference). Railco was not advised of further proceedings as requested, and its concerns were apparently not addressed by the Surface Transportation Board.

At the July 3 voting conference on the proposed UP/SP merger, the Surface Transportation Board voted to approve the merger, subject to a list of 35 recommended conditions including the following:

(11) We recommend that the Board impose as a condition the terms of the Utah Railway agreement. This recommendation reflects our view that, for certain coal shippers, the rights provided for in the Utah Railway agreement will ameliorate the competitive harm that would be generated by an unconditioned merger.

(35) Finally, we recommend that the Board deny all requests for conditions except those we have specifically indicated should be granted in whole or part.

One of the major concerns raised throughout by opponents of the merger, including the Department of Justice and the Department of Transportation, was the possible antitrust and other anticompetitive consequences. Those consequences remain very much a reality for Railco. Unless the present state of affairs changes, upon final approval of the merger Savage will be granted an effective monopoly over Utah Railway business for which Railco is now able to compete.

Railco respectfully requests that the Utah Railway Agreement be amended to include, and that the Surface Transportation Board include in its final approval, a condition that Utah Railway be granted the same access to Railco's loadout facility as it is given to Savage's loadout facility. I look forward to your reply.

Sincerely,

F. Mark Hansen

STB FD 32760

9-4-96 J

85626

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ARVID E. ROACH II

DIRECT DIAL NUMBER

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September 4, 1996

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BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

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TELEPHONE: 32-2- 512-9890

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BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th St. & Constitution Ave., N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760, Union Pacific Corp.,
et al. -- Control & Merger -- Southern Pacific
Corp., et al.

Dear Secretary Williams:

The Applicants have been served with petitions for
clarification, dated September 3, by BNSF and Geneva Steel.
We intend to respond to these petitions on or before the
deadline of September 23.

Sincerely,

Arvid E. Roach II

Arvid E. Roach II

On Behalf of the Applicants

cc: All Parties of Record

Item No. _____

Page Count _____

Sept 14

ENTERED Office of the Secretary
SEP 5 1996
5 Part of Public Record

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32760

9-3-96

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DONELAN, CLEARY, WOOD & MASER, P.C.

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OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

September 3, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, NW
Washington, D.C. 20423

Re: Finance Docket No. 32760; *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company.*

Dear Mr. Williams:

Enclosed for filing in the above-captioned proceeding are an original and twenty (20) copies of the PETITION FOR RECONSIDERATION OF THE DOW CHEMICAL COMPANY, designated DOW-27. Also enclosed is a diskette formatted in WordPerfect 5.1 with a copy of the Petition.

If you have any questions, please do not hesitate to contact me.

Sincerely,

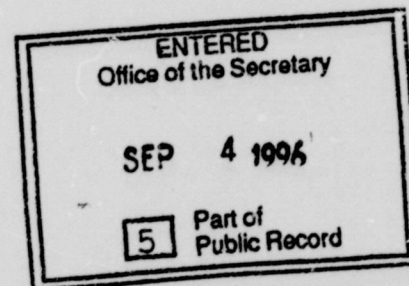
Nicholas J. DiMichael
Jeffrey O. Moreno

ENCLOSURES
1750-020

Item No. _____

Page Count 8

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BEFORE THE
SURFACE TRANSPORTATION BOARD

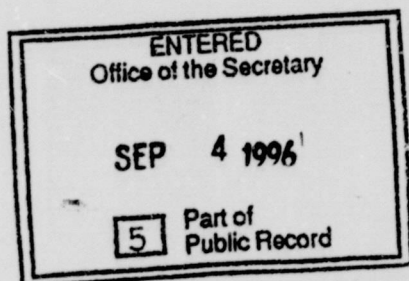
Finance Docket No. 32760

*Union Pacific Corporation, Union Pacific Railroad Company
And Missouri Pacific Railroad Company*

- Control And Merger -

*Southern Pacific Rail Corporation,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. And The
Denver And Rio Grande Western Railroad Company*

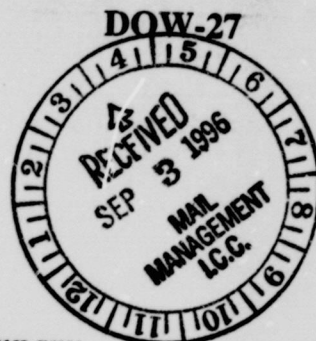
PETITION FOR RECONSIDERATION OF
THE DOW CHEMICAL COMPANY



Nicholas J. DiMichael
Jeffrey O. Moreno
DONELAN, CLEARY, WOOD & MASER, P.C.
1100 New York Avenue, N.W.
Suite 750
Washington, D.C. 20005-3934
(202) 371-9500

September 3, 1996

Attorneys for The Dow Chemical Company



BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 32760

*Union Pacific Corporation, Union Pacific Railroad Company
And Missouri Pacific Railroad Company*

- Control And Merger -

*Southern Pacific Rail Corporation,
Southern Pacific Transportation Company, St. Louis
Southwestern Railway Company, SPCSL Corp. And The
Denver And Rio Grande Western Railroad Company*

**PETITION FOR RECONSIDERATION OF
THE DOW CHEMICAL COMPANY**

The Dow Chemical Company ("Dow"), pursuant to 49 U.S.C. §10327(g)(1) (1995) and 49 C.F.R. §1115.3, respectfully petitions the Surface Transportation Board ("STB" or "Board") for reconsideration and modification of the relief granted to Dow in the above-captioned proceeding. Dow believes that the relief requested in this petition for reconsideration will more effectively preserve Dow's build-out option from its Freeport, Texas chemicals and plastics production complex.

In Decision No. 44, served August 12, 1996, the Board addressed Dow's Request for Conditions (DOW-11), filed March 29, 1996. The conditions requested by Dow were intended to preserve a build-out from Dow's Freeport facilities to the Southern Pacific Lines ("SP") at Texas City, Texas. After the

merger, this build-out option would no longer be beneficial to Dow because Freeport currently is solely served by the Union Pacific Railroad ("UP").

The Board granted Dow's Request for Conditions in part and also revised those conditions in a manner which was neither requested nor anticipated by Dow. Specifically, the Board conditioned the merger:

by requiring that UP/SP grant trackage rights to a carrier *to be named by Dow*, subject to our [STB] approval, over UP's line from Texas City to Houston and over UP's or SP's line from Houston to connections with KCS and BNSF at Beaumont, with the right to connect to the build-out line in the vicinity of Texas City in order to serve Dow at Freeport and any other shippers located on the build-out line.

Decision No. 44 at 188. [emphasis added] This relief is a variation on Dow's "Alternative Request for Relief" made in DOW-11.¹ Dow's Alternative Request, however, did not include the "Beaumont connections" language that appears in the Decision.

Dow's Alternative Request for Conditions was for trackage rights for a carrier to be named by Dow from Houston to the SP build-out point near Texas City and from Houston to both New Orleans and Memphis. This latter element -- trackage rights from Houston to New Orleans and Memphis -- was necessary to ensure that a carrier which would substitute for the SP would have a route structure comparable to that of the SP and that the carrier could connect directly with its existing track, post-merger. The Board rejected Dow's request for trackage rights to New Orleans and Memphis and noted that "[t]he preservation of Dow's SP build-out option requires only that trackage rights run from the build-out point to a connection with an independent Class I carrier." Decision No. 44 at 188.

¹ Dow also made a Primary Request which sought trackage rights access for a carrier to be named by Dow to a build-out point that was closer to Freeport than the SP build-out point at Texas City. This point would be between Alcoa and Angleton, Texas. The rationale for this request was that no other carrier possessed a route structure that would give it access to Dow traffic over a build-out that would be equivalent to the traffic gains that would be experienced by the SP. As a result, only a more economical (i.e., shorter) build-out would restore Dow's pre-merger competitive position. The Board concluded that the evidence did not justify this request.

In seeking to preserve the pre-merger "status quo," the Board granted trackage rights to a carrier of Dow's choosing, subject to Board approval, from Texas City to Houston and beyond to connections at Beaumont. However, although the decision clearly states that the build-out carrier is to be named by Dow, the "Beaumont connections" language seems to limit Dow's choice of carriers to only the KCS. Other than UP/SP, Beaumont will be served directly only by KCS and BNSF, post-merger. BNSF, however, does not require the trackage rights granted in the decision to serve Dow via a build-out. Furthermore, as Dow demonstrated in its evidence, BNSF has shown little interest in its build-out option since the UP/SP merger was announced. This appears to effectively leave Dow with a choice of one, the KCS, for a potential build-out carrier that might preserve Dow's SP build-out option.

A choice of only the KCS at Beaumont will not effectively replace the competitive alternative now posed by the SP that will be lost post-merger. KCS has a much shorter and different route structure than the SP. In particular, KCS does not directly reach the Chicago gateway, which is the major interchange for Dow's Northeastern traffic, and the KCS gets from Beaumont to the New Orleans gateway only very circuitously. Furthermore, KCS terminates a very small percentage of Dow's traffic. The additional lengths of haul and traffic volumes available to the KCS as a result of a build-out would not even begin to approach the potential traffic gains that were available pre-merger to the SP. The KCS is a capable Class I carrier, but, as to Dow traffic from Freeport, the KCS alone cannot provide the competitive alternative that the SP would have offered. Thus, a build-out that was likely when it involved the SP may not be as attractive if it were to involve only the KCS because the KCS simply will not be in a competitive position comparable to the SP's pre-merger position. The status quo which the Board

sought to achieve for Dow is out of balance if the only reasonable build-out alternative for Dow is on the KCS to Beaumont.

Although Dow still contends that the most effective way to ameliorate the loss of the SP build-out option is to grant Dow's request for trackage rights for the build-out carrier to both Memphis and New Orleans, if the Board remains unpersuaded, Dow urges the Board, at a minimum, to include Baton Rouge, Louisiana within the current grant of relief in Decision No. 44. Specifically, Dow requests that the Board modify its grant of relief on page 188 of the decision as follows, by adding the italicized language:

We will therefore grant a modified version of Dow's alternative request, and condition the merger, by requiring that UP/SP grant trackage rights to a carrier to be named by Dow, subject to our approval, over UP's line from Texas City to Houston and over UP's or SP's line from Houston to connections with KCS and BNSF at Beaumont *and to connections with KCS and IC at Baton Rouge*, with the right to connect to the build-out line in the vicinity of Texas City in order to serve Dow at Freeport and any other shippers located on the build-out line.

This requested modification will enhance the ability of Dow to effectively replace the SP build-out option from Freeport in several ways. First, it will truly give Dow a meaningful choice of carriers contemplated in the original grant of relief by giving Dow access to the Illinois Central Railroad ("IC") at Baton Rouge. Second, it will allow Dow's New Orleans gateway traffic to move over direct routes from Baton Rouge to New Orleans via the KCS or IC, bypassing the circuitous route of the KCS that would be required if the traffic is forced over Beaumont. Third, because the IC has a direct route from New Orleans to Chicago, it would preserve Dow's single-line access to Chicago, a very important gateway for Dow's traffic to which the KCS does not have single-line access. Because the SP could have offered Dow direct service to both New Orleans and Chicago, neither of which is available to Dow via Beaumont, the addition of Baton Rouge as

an interconnection point will improve the probability that the build-out carrier will have sufficient incentive to construct the build-out.

Although Dow did not originally request trackage rights and interconnection for a build-out carrier at Baton Rouge, neither did it request such rights at Beaumont. Because Beaumont was included as part of Dow's relief upon the Board's own suggestion, this is the first formal opportunity under the Board's procedural schedule that Dow has had to comment on this matter.² Therefore, Dow's request to include Baton Rouge within the relief granted by the Board is an appropriate matter for a Petition for Reconsideration.

WHEREFORE, for the foregoing reasons, Dow requests that the Board grant this Petition for Reconsideration.

Respectfully submitted,



Nicholas J. DiMichael

Jeffrey O. Moreno

Donelan, Cleary, Wood & Maser, P.C.

1100 New York Avenue, N.W., Suite 750

Washington, D.C. 20005-3934

(202) 371-9500

September 3, 1996

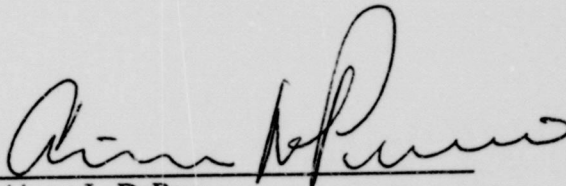
Attorneys for The Dow Chemical Company

² On July 30, 1996, counsel for Dow submitted a letter to the Board setting out Dow's views regarding the Board's decision. These are the same views that Dow has expanded upon in this Petition. On August 2, 1996, KCS submitted a letter in reply. In footnote 18 of the Board's August 12th decision, the Board declined to act on various unnamed requests for clarification and indicated that parties must await the Board's written decision before seeking relief, which Dow has done in this Petition.

In its August 2nd letter, KCS appeared to take particular issue with Dow's characterization of KCS' financial resources. Dow wishes to state that it did not intend to deprecate KCS in its July 30th letter, but merely intended to note the fact that, compared to a number of Class I carriers in the area, including the SP, KCS has a less extensive route structure and a smaller financial base.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR RECONSIDERATION OF THE DOW CHEMICAL COMPANY has been served via first class mail, postage prepaid on all parties of record in this proceeding on the 3rd day of September, 1996, and by hand delivery to Washington, DC counsel for Applicants.


Aimee L. DePew

STB FD 32760 9-1-96 J 85043

LAW OFFICES OF

F. MARK HANSEN, P.C.

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ENTERED
Office of the Secretary

AUG - 2 1996

5 Part of
Public Record

85043
ADMITTED TO PRACTICE IN UTAH,
ARIZONA, COLORADO AND NEVADA.

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July 29, 1996

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The Honorable Robert Bennett
431 Dirksen Senate Office Building
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The Honorable James V. Hansen
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The Honorable William H. Orton
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Item No. _____
Page Count 4
August 1, 1996 #1

RE: Pending UP/SP merger -- anticompetitive impact on Railco, Inc. FD 32760

Ladies and gentlemen:

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2. Additional Coal Mine Access

a) In addition to the coal mine access granted in Section 1.c), UP/SP also grant UTAH access to Cyprus Amax' Willow Creek Mine adjacent to the SP main line near Castle Gate, Utah

4. Term

... the grants of rights under Sections 1 and 2 shall be effective only upon UP's acquisition of control of SP.

On its face the Utah Railway Agreement gives Utah Railway access rights to the Savage loadout but not to the Railco loadout. This would give Savage a virtual monopoly for the business of all coal producers using Utah Railway. This competitive advantage could eventually lead to Railco's demise.

By letter dated March 12, 1996, counsel for Railco notified Union Pacific of this concern, and asked that the Utah Railway Agreement be modified to allow Utah Railway access to the loadout facilities of both Savage and Railco. Union Pacific did not respond. On or about March 21, 1996, Railco filed and served its Notice of Opposition to Merger and Intent to Participate in Proceedings (attached and incorporated here by reference). Railco was not advised of further proceedings as requested, and its concerns were apparently not addressed by the Surface Transportation Board.

At the July 3 voting conference on the proposed UP/SP merger, the Surface Transportation Board voted to approve the merger, subject to a list of 35 recommended conditions including the following:

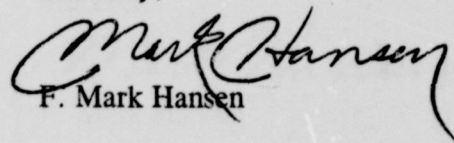
(11) We recommend that the Board impose as a condition the terms of the Utah Railway agreement. This recommendation reflects our view that, for certain coal shippers, the rights provided for in the Utah Railway agreement will ameliorate the competitive harm that would be generated by an unconditioned merger.

(35) Finally, we recommend that the Board deny all requests for conditions except those we have specifically indicated should be granted in whole or part.

One of the major concerns raised throughout by opponents of the merger, including the Department of Justice and the Department of Transportation, was the possible antitrust and other anticompetitive consequences. Those consequences remain very much a reality for Railco. Unless the present state of affairs changes, upon final approval of the merger Savage will be granted an effective monopoly over Utah Railway business for which Railco is now able to compete.

Railco respectfully requests that the Utah Railway Agreement be amended to include, and that the Surface Transportation Board include in its final approval, a condition that Utah Railway be granted the same access to Railco's loadout facility as it is given to Savage's loadout facility. I look forward to your reply.

Sincerely,


F. Mark Hansen

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 32760

UNION PACIFIC CORPORATION, et al.



NOTICE OF OPPOSITION TO MERGER AND
INTENT TO PARTICIPATE IN PROCEEDINGS

Please take notice that Railco, Inc., a Utah corporation engaged in loading coal from Utah coal mines onto the rail at a location in Carbon County, Utah, opposes the proposed merger of Union Pacific Railroad with Southern Pacific Railroad and intends to participate in these proceedings. Railco opposes the proposed merger because the merger as presently contemplated will substantially reduce competition among coal load out facilities in the Carbon and Emery County area and will unlawfully and unfairly discriminate against Railco.

Railco, Inc. is an independent load out operation situated on real property contiguous to the Savage Coal Terminal, near Price, Utah. Savage uses the same rail spur as Railco, Inc. and both companies compete for the privilege of loading coal for rail shipment from the surrounding coal mines. Union Pacific recently reached an agreement with Utah Railway Company that would allow Utah Railway access to the Savage Coal Terminal but will not allow Utah Railway access to Railco's facility, even though it is right next to Savage. Coal contracts between producers and users typically specify that

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OFFICE OF THE SECRETARY
U.S. TRANSPORTATION BOARD
217 STREET AND CONSTITUTION AVENUE, NW
WASHINGTON, DC 20423

AUG 30 1995

5 Part of
Public Record



FO 32700

DEAR SIR,

MY NAME IS MICHAEL O. MYERS, AND I AM A CLERK CURRENTLY EMPLOYED WITH THE SOUTHERN PACIFIC RAILROAD COMPANY IN BLOOMINGTON, IL. THIS LETTER IS IN RESPONSE TO YOUR RECENT AGREEMENT FOR THE UNION PACIFIC AND THE SOUTHERN PACIFIC RAILROADS TO MERGE.

WE WERE ASKED BY OUR UNION, THE T.C.U. TO WRITE LETTERS OF PROTEST AGAINST THIS MEGA-MERGER, WHICH I CHOSE NOT TO DO BECAUSE I NEVER HAD ANY DOUBT THAT IT WOULD GO THROUGH BECAUSE OF THE TERRIBLE MANAGEMENT OF THE SOUTHERN PACIFIC THAT HAS CAUSED THE S.P. TO DETERIORATE TO A POINT OF BANKRUPTCY. I EVEN WROTE TO THE PRESIDENT OF THE TCU, EMPLOYING HIM TO SUPPORT THE MERGER, AS THE UTU AND BLE DID TO RECEIVE CONCESSIONS IN ADVANCE, AND WAS TURNED DOWN.

I HAVE TWO QUESTIONS TO ASK OF YOU. FIRST, CAN YOU TELL ME IF IT IS POSSIBLE TO VOTE OUT YOUR PRESENT UNION (TCU). I HAVE BEEN TOLD IT IS POSSIBLE, AS LONG AS YOU CHOOSE ANOTHER RAILROAD UNION TO REPRESENT YOU. THE TCU HAS CONTINUALLY BACKED DOWN FROM THE RAILROADS I HAVE WORKED FOR TO THE POINT WHERE THERE ARE HARDLY ANY JOBS AVAILABLE TO CLERICAL PEOPLE. I CURRENTLY WORK FOR THE S.P.C.S.L. PART OF THE S.P., AND WE ARE CURRENTLY WORKING WITHOUT BENEFIT OF A CONTRACT, AND WERE THE ONLY PART OF THE S.P. TO GIVE BACK THE COST OF LIVING TO THE COMPANY. I HAVE DISCUSSED THE POSSIBILITY OF JOINING ANOTHER UNION WITH OTHER MEMBERS OF OUR SENIORITY DISTRICT (ABOUT 25 MEMBERS) AND THEY AGREE THAT THEY WOULD LIKE TO BELONG TO THE UTU FOR REPRESENTATION, AS THE TCU IS TOTALLY INEFFECTIVE IN THEIR DEALINGS WITH THE RAILROAD.

MY SECOND QUESTION IS THIS. I HAVE WORKED FOR VARIOUS RAILROADS HERE IN BLOOMINGTON, IL FOR GOING ON 29 YEARS. WITH THE FUTURE MEGA-MERGER I AM FACED WITH, THE POSSIBILITY OF SECURING A POSITION IS SLIM TO NONE. MAYBE YOU CAN HELP ME WHERE THE TCU CAN'T. EXACTLY WHAT IS THE NEW YORK DOCK AGREEMENT AND HOW WILL IT APPLY TO THE CLERKS ON THE SPCSL AS THE S.P. CONSOLIDATES OUR POSITIONS INTO THE U.P. SYSTEM. THE UTU GENERAL CHAIRMAN ON THE PROPERTY HAS MAINTAINED THAT IT IS PRETTY SIMPLE, IF YOU CAN'T SECURE A POSITION WITHIN A 30 MILE RADIUS OF YOUR CURRENT TERMINAL, THEY HAVE TO PAY YOU FOR UP TO 6 YEARS. WHILE I REALIZE THIS SOUNDS TOO GOOD TO BE TRUE, I THINK THE U.P. SHOULD AT LEAST PROVIDE US WITH JOBS IN THE IMMEDIATE VICINITY OR BE MADE TO GIVE US A DECENT SEVERANCE PACKAGE. THE TCU HAS ABSOLUTELY NO INFORMATION FOR US, AND FOR ONE AM TIRED OF BEING FORCED TO BELONG TO A UNION THAT EXISTS ONLY WHEN YOU SEE ON YOUR PAY STUB THE DUES DEDUCTION.

SINCE I'M SURE THESE AND OTHER PROBLEMS WERE ENCOUNTERED WITH THE N/ATSF MERGER, SURELY SOMEBODY SOMEWHERE CAN LET US KNOW A LITTLE IN ADVANCE WHAT THE FUTURE HOLDS FOR A CLERK. COULD YOU PLEASE FURNISH US WITH A COPY OF THE NEW YORK DOCK AGREEMENT THAT WE WILL BE COVERED BY, AND INFORMATION, IF ANY, WHETHER OR NOT WE CAN BE FORCED OUT OF OUR HOME ZONE OR LOSE OUR NEW YORK DOCK.

THANK YOU IN ADVANCE FOR ANY HELP YOU CAN GIVE ME ON THESE TWO VERY IMPORTANT QUESTIONS.

INCERELY,

Michael
MICHAEL O. MYERS
224 NEWCASTLE DRIVE
BLOOMINGTON, IL 61704
END

Item No. _____

Page Count 1

Aug 23

STB FD

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8-26-96

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Item No. _____

Page Count 175

Aug # 21

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
121 Spear Street, P. O. Box 193939
San Francisco, CA 94119-3939

August 22, 1996

U.S. Court of Appeals Docket Number: 96-70673
Finance Docket No. 32760
Short Title: City of Reno v. Surface Trans. Board



Dear Counsel:

A copy of your notice of appeal/petition has been received in the Clerk's office of the United States Court of Appeals for the Ninth Circuit.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeal docket number when corresponding with this office relative to your case.

THE DUE DATES FOR FILING THE PARTIES' BRIEFS AND OTHERWISE PERFECTING THE APPEAL HAVE BEEN SET BY THE ENCLOSED "TIME SCHEDULE ORDER", PURSUANT TO APPLICABLE FRAP RULES. THESE DATES CAN BE EXTENDED ONLY BY COURT ORDER. FAILURE OF THE PETITIONER/APPELLANT TO COMPLY WITH THE TIME SCHEDULE ORDER WILL RESULT IN AUTOMATIC DISMISSAL OF THE APPEAL.

The following information is being provided in an attempt to answer the most frequently asked questions regarding the appellate process. Please review this information very carefully. For convenience, the term "Circuit Rules" will be used for "Rules of the United States Court of Appeals for the Ninth Circuit" and "FRAP" for "Federal Rules of Appellate Procedure" will be used throughout this document.

Enclosed with this letter is an appellate processing schedule along with a case processing checklist which may be attached to your case file as an aid in monitoring case progress.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

U.S. Court of Appeals Docket Number: 96-70673
Finance Docket Number: Docket No. 32760

CITY OF RENO

Petitioner

FILED

AUG 22 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

v.

SURFACE TRANSPORTATION BOARD

Respondent

TIME SCHEDULE ORDER

The parties shall meet the following time schedule:

-> Appellant/petitioner shall immediately file the civil appeals docketing statement (CADS), pursuant to Circuit Rule 33-1;

-> Appellant/petitioner's opening brief and excerpts of record shall be served and filed pursuant to FRAP 31(a) and Circuit Rules 32 and 31-2;

11/12/96

-> The brief of appellee/respondent shall be filed and served, pursuant to FRAP 31(a) and Circuit Rules 32 and 31-2;

12/12/96

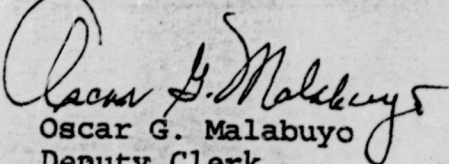
-> The optional appellant/petitioner reply brief shall be filed and served within fourteen days of service of the appellee/respondent's brief, pursuant to FRAP 31(a) and Circuit Rules 32 and 31-2.

FAILURE OF THE PETITIONER/APPELLANT TO COMPLY WITH THE TIME SCHEDULE ORDER WILL RESULT IN AUTOMATIC DISMISSAL OF THE APPEAL. CIRCUIT RULE 42-1.

FOR THE COURT:

Cathy A. Catterson
Clerk of Court

By:


Oscar G. Malabuyo
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

City of Reno

Petitioner

v.

Surface Transportation Board
of the United States

Respondent.

96-70673 FILED

Petition for Review

AUG 21 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Petitioner City of Reno hereby petitions the Court for review of the Decision and Order of the Respondent Surface Transportation Board of the United States entered as Decision No. 44 and served on August 12, 1996 in Finance Docket No. 32760, entitled Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company, approving the merger application subject to conditions to mitigate the anticompetitive aspects and adverse environmental impacts of the merger transaction.

DATED: August 20, 1996

By

PAUL H. LAMBOLEY (NV 2149)
Keck, Mahin & Cate
555 12th St., N.W.
Washington, D.C. 20004-1200
Tel. (202) 637-3609
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PATRICIA A. LYNCH (NV 0001388)
City Attorney
MICHAEL K. HALLEY (NV 000078)
Deputy City Attorney
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490 South City Street
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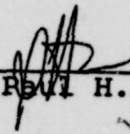
Counsel for Petitioner
City of Reno

CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of August, 1996, served a copy of the foregoing document by hand on:

Vernon A. Williams, Secretary
Surface Transportation Board
of the United States
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Henri Rush, General Counsel
Surface Transportation Board
of the United States
1201 Constitution Ave., N.W.
Washington, D.C. 20423



Paul H. Lamboley

100257B6



Vernon A. Williams, Esq.
SURFACE TRANSPORTATION BOARD
1201 Constitution Avenue, N.W.
Washington, DC 20423

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Item No. 85333

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Page Count 3
Aug. #10

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SUITE 600
WASHINGTON, DC 20004-1200
(202) 637-3601
FAX (202) 347-0140

KECK, MAHIN & CATE

FILE NUMBER

48189-001

DIRECT DIAL

202-637-3609

August 22, 1996

BY HAND

Henri Rush, Esq.
General Counsel
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

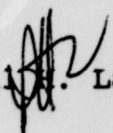
Re: F.D. No. 32760 Union Pacific Corp. et al., - Control and
Merger - Southern Pacific Rail Corp. et al.
Decision No. 44, served August 12, 1996

Dear Mr. Rush:

Enclosed please find a file-stamped copy of the City of Reno's Petition for Review filed in the United States Court of Appeals for the Ninth Circuit on August 21, 1996, seeking review of Decision No. 44 entered in F.D. No. 32760 and served August 12, 1996.

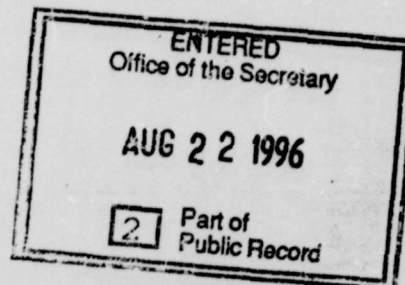
A copy of this letter and enclosure is also being provided to Vernon A. Williams, Secretary of the Board.

Very truly yours,


Paul H. Lamboley

PHL/dph
Enclosure

RUSH.822



OFFICE OF SECRETARY
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RECEIVED
SURFACE TRANSPORTATION
BOARD

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

City of Reno

Petitioner

v.

Surface Transportation Board
of the United States

Respondent.

96-70673

Petition for Review

FILED

AUG 21 1996

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

Petitioner City of Reno hereby petitions the Court for review of the Decision and Order of the Respondent Surface Transportation Board of the United States entered as Decision No. 44 and served on August 12, 1996 in Finance Docket No. 32760, entitled Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and the Denver and Rio Grande Western Railroad Company, approving the merger application subject to conditions to mitigate the anticompetitive aspects and adverse environmental impacts of the merger transaction.

DATED: August 20, 1996

By

PAUL H. LAMBOLEY (NV 2149)
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Tel. (202) 637-3609
Fax (202) 347-0140

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City Attorney
MICHAEL K. HALLEY (NV 000078)
Deputy City Attorney
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490 South City Street
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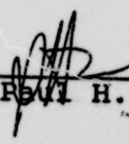
Counsel for Petitioner
City of Reno

CERTIFICATE OF SERVICE

This is to certify that I have this 20th day of August, 1996,
served a copy of the foregoing document by hand on:

Vernon A. Williams, Secretary
Surface Transportation Board
of the United States
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Henri Rush, General Counsel
Surface Transportation Board
of the United States
1201 Constitution Ave., N.W.
Washington, D.C. 20423



Paul H. Lamboley

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TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

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WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

WILLIAM A. MULLINS

DIRECT: 202-274-2953

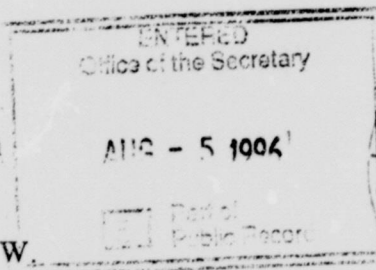
Item No. _____

August 2, 1996

Page Count 2

August 1996 #3

The Honorable Linda J. Morgan
Chairman
Surface Transportation Board
12th & Constitution Avenue, N.W.
Room 4126
Washington, D.C. 20423



Re: Finance Docket No. 32760, *Union Pacific Corporation, et al. -- Control and Merger -- Southern Pacific Corporation, et al.*

Dear Chairman Morgan:

On July 30, 1996, counsel of record for The Dow Chemical Company ("Dow") addressed a letter to you asking that the Board *clarify and amend* the Staff Report's Recommendation No. 15. KCS recognizes the questionable validity of such a letter request and the questionable propriety of the Board's consideration of the requests which it contains. As a result, KCS is reluctant to address this letter to you. However, the Dow letter contains apparent characterizations of KCS' financial resources and rail service capabilities which, in their own right, require clarification.

Dow appears to be uninformed as to KCS' financial resources and route structure. KCS debt is rated BBB+ by Standard & Poors, equivalent to CSX and above BNSF and Illinois Central. KCS has demonstrated a credit capacity to complete new transactions as stated in the public filings with the SEC, including a recent \$5 million shelf offering. KCS has more than sufficient financial resources to continue to serve existing customers, to expand as a strong rail competitor in the Gulf Coast area, and to move NAFTA rail traffic.

In so far as KCS's "route structure" to and from the Gulf Coast region is concerned, KCS has highly competitive routes and direct connections with the Norfolk Southern and CSX, via Meridian, Mississippi and Birmingham, Alabama, respectively. Additionally, the STB just recently approved trackage rights of CSX over the Meridian and Bigsby Railroad, which also gives CSX a direct connection at Meridian with KCS. KCS maintains a voluntary coordination agreement with the Illinois Central Railroad between Jackson, Mississippi and junction points with Conrail in the State of Illinois, including Chicago, East St. Louis, and Effingham, whereby

The Honorable Linda J. Morgan
August 2, 1996
Page 2

it has access to customers in the Northeastern United States. KCS also has the ability to reach St. Louis via the Gateway Western, with a direct connection to Conrail, and to Chicago via the SOO Line to connect with U.S. and Canadian roads serving customers in the Northeastern U.S. and Canada.

KCS is a viable company for the above reasons. We are certainly capable of a build-in. KCS recently completed a build-in to Exxon at Baton Rouge, Louisiana. Also, KCS has been granted the right to build-in to the Shell, Borden and BASF facilities at Geismar, Louisiana and is awaiting a ruling from the STB on the environmental impacts.

KCS does not believe that Dow intentionally meant to deprecate KCS. KCS believes that what Dow was trying to do was to open up the build-in granted by Recommendation No. 15 to as many potential candidates as possible, including KCS.

Sincerely,



William A. Mullins
Attorney for The Kansas City
Southern Railway Company

cc: The Honorable Vice Chairman J.J. Simmons III
The Honorable Commissioner Gus A. Owen
Vernon A. Williams, Secretary
All Parties of Record

STB

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7-30-96

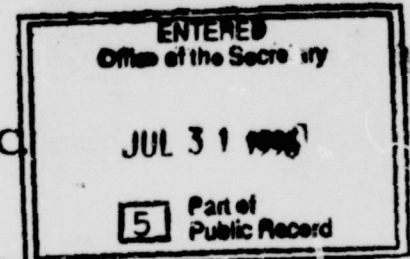
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July, 1996 #34

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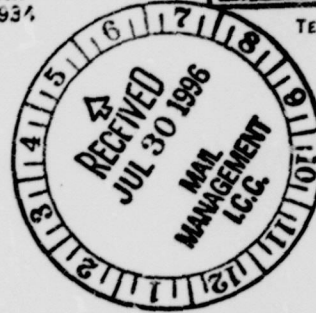
DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW
SUITE 750
1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

July 30, 1996

The Honorable Linda J. Morgan, Chairman
Surface Transportation Board
Room 4126
12th Street and Constitution Avenue
Washington, D.C. 20423-0001Re: Finance Docket No. 32760, *Union Pacific Corporation et al.—Control and Merger—Southern Pacific Rail Corporation et al.*

Dear Chairman Morgan:

On behalf of The Dow Chemical Company ("Dow"), we would like to direct the Board's attention to a matter of significant concern to Dow in the above-referenced proceeding. At the Voting Conference held on July 3, 1996, the Board's Staff presented 35 recommendations, which were adopted by the Board. Recommendation No. 15 granted Dow certain relief to preserve a build-out option to Dow's Freeport, Texas facilities. Dow is concerned, however, that, because facts specific to this situation may have been overlooked in reviewing the massive record submitted in this proceeding, Recommendation No. 15 may not fully accomplish what the Board intends. Through this letter, Dow requests that the Board clarify and amend its findings in the written order scheduled to be released on August 12, 1996 in order to effectuate the stated intent of Recommendation No. 15.

Recommendation No. 15 of the Staff Report states:

(15) With respect to Dow at Freeport, we recommend that the Board *preserve Dow's existing SP build-out option* by providing that trackage rights will be granted to a carrier *to be named by Dow*, subject to Board approval, *over UP's* line from Texas City to Houston and over UP's or SP's line from Houston *to connections with KCS and BN/Santa Fe at Beaumont*, with the right to connect to the build-out line in the vicinity of Texas City in order to serve Dow and any other shippers located on the build-out line. Although this condition preserves an SP build-out option, the trackage rights will run over the UP line from Texas City to Houston because the SP line is being abandoned.

[emphasis added] This Recommendation is a variation on Dow's "Alternative Request for Relief" made in DOW-11.¹ Dow's Alternative Request, however, did not include the "Beaumont connections" language that appears in the Recommendation.

¹ Dow also made a Primary Request which sought trackage rights access for a carrier to be named by Dow to a build-out point that was closer to Freeport than the SP build-out point at Texas City. This point would be between Algoa and Angleton, Texas. The rationale for this request was that no other carrier possessed a route structure that would give it access to Dow traffic over a build-out that would be equivalent to the traffic gains that would be experienced by the SP. As a result, only a more economical (i.e., shorter) build-out would restore Dow's pre-merger

Letter to The Honorable Linda J. Morgan
July 30, 1996
Page 2 of 3

Dow's Alternative Request was for trackage rights for a carrier to be named by Dow from Houston to the SP build-out point near Texas City *and* from Houston to both New Orleans and Memphis. This latter element -- trackage rights from Houston to New Orleans and Memphis -- was necessary to ensure that the carrier had a route structure comparable to the SP and that the carrier could connect directly with its existing track, post-merger. The Board staff's recommendation to grant trackage rights only to Beaumont will not accomplish this.

Although Recommendation No. 15 clearly states that the build-out carrier is to be named by Dow, the "Beaumont connections" language seems to limit Dow's choice of carriers to only the KCS. Other than UP/SP, Beaumont will be served directly only by KCS and BNSF, post-merger. BNSF, however, does not require the trackage rights granted in Recommendation No. 15 to serve Dow via a build-out. Furthermore, as Dow demonstrated in its evidence, BNSF has shown little interest in its build-out option since the UP/SP merger was announced. This appears to effectively leave Dow with a choice of one, the KCS, for a potential build-out carrier that will preserve Dow's SP build-out option under Recommendation No. 15.

However, of the various potential build-out carriers that could stand in the shoes of the SP, KCS would seem to have certain limitations in attempting to replace the competition now posed by the SP that will be lost post-merger. KCS has the shortest route structure and least financial resources of any carrier in the area. It does not reach the Chicago gateway, which is the major interchange for Dow's Northeastern traffic, and it gets from Beaumont to New Orleans only very circuitously. Furthermore, KCS terminates a very small percentage of Dow's traffic. The additional lengths of haul and traffic volumes available to the KCS over a build-out would not even begin to approach the potential traffic gains that were available pre-merger to the SP. Thus, a build-out that was feasible when it involved the SP may not be constructed if it were to involve only the KCS because the KCS will not be in a competitive position comparable to the SP' pre-merger position. These are the kinds of facts that are specific and important to Dow's Freeport, Texas situation. Additionally, because Recommendation No. 15, by its terms, is intended to provide benefits to other shippers along the build-out route who also will lose an SP build-out post-merger, these facts and the severe limitations that the "Beaumont connections" language seems to imply need to be considered by the Board.

Therefore, Dow believes that, in order to truly "preserve Dow's existing SP build-out option" at Texas City, a build-out carrier must have trackage rights from Houston to New Orleans and Memphis. Moreover, if Dow is to have a meaningful choice in the selection of build-out carriers, such as Illinois Central, CSX, Norfolk Southern as well as the KCS, then the New Orleans and Memphis element of Dow's request for relief should be granted.

If, however, the Board is reluctant to grant a build-out carrier trackage rights to New Orleans and Memphis, Dow believes that, at a minimum, the Board should include Baton Rouge, Louisiana with Beaumont, Texas in Recommendation No. 15. This would at least give Dow a choice of build-out carriers between KCS and Illinois Central, both of which serve Baton Rouge and have direct lines from there into New Orleans. Illinois Central also has a direct route to Chicago, a very important gateway for Dow's traffic. Although Dow did not originally suggest trackage rights and interconnection for a build-out carrier at Baton Rouge, neither did it suggest

competitive position. No mention was made of Dow's primary request in either the staff presentation or the Board's discussion.

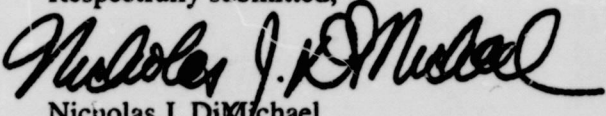
DONELAN, CLEARY, WOOD & MASER, P.C.

Letter to The Honorable Linda J. Morgan
July 30, 1996
Page 3 of 3

such rights at Beaumont. The addition of Baton Rouge, however, will at least enhance the possibility of fulfilling the stated purpose of Recommendation No. 15 of "preserving Dow's existing SP build-out option" at Texas City and giving Dow a choice of carriers.

Therefore, Dow urges the Board to grant relief, in its written decision, that will fulfill the stated intent of Recommendation No. 15.

Respectfully submitted,


Nicholas J. DiMichael
Jeffrey O. Moreno

Counsel for The Dow Chemical Company

cc: The Honorable Vice-Chairman J.J. Simmonns III
The Honorable Commissioner Gus A. Owen
Vernon A. Williams, Secretary
All Parties of Record

STB FD 32760

6-5-96

J

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COVINGTON & BURLING

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ENGLAND

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TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

Item No. _____

Page Count 1 Plus Diskette
JUNE, 1996 # 97

June 5, 1996



HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
12th Street and Constitution
Avenue, N.W.
Washington, D.C. 20423

Re: UP/SP Merger, Finance Docket No. 32760

Dear Mr. Williams:

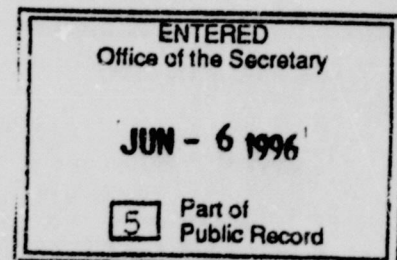
Enclosed for filing is a diskette in WordPerfect 5.1 format containing the text of pleadings filed by the Port of Seattle on June 3, 1996.

Sincerely,

Ann R. Hornan

Ann R. Hornan,
Transportation Specialist

Enclosures



STB FD 32760 6-5-96 J

84071

84071

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

WASHINGTON, D.C. 20044-7566

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TELEX: 89-593 (COVLING WSH)

CABLE: COVLING

WRITER'S DIRECT DIAL NUMBER

(202) 662-5016

LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 071-495-5655

TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

Item No. _____

Page Count 1 Plus D. Skett.
JUNE, 1996 # 96

June 5, 1996

**HAND DELIVERY**

The Honorable Vernon A. Williams
 Secretary
 Surface Transportation Board
 Room 2215
 12th Street and Constitution
 Avenue, N.W.
 Washington, D.C. 20423

Re: UP/SP Merger, Finance Docket No. 32760

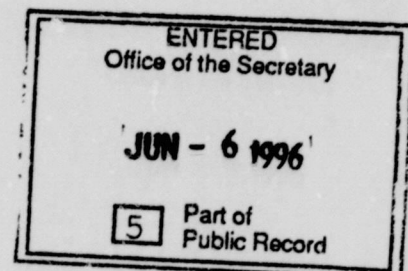
Dear Mr. Williams:

Enclosed for filing is a diskette in WordPerfect 5.1 format containing the text of pleadings filed by Exxon Chemical Company on June 3, 1996.

Sincerely,

Ann R. Homan,
 Transportation Specialist

Enclosures



STB FD

32760

6-4-96

J

84028

BOB MILLER
Governor

STATE OF NEVADA
PUBLIC SERVICE COMMISSION OF NEVADA
Capitol Complex
727 Fairview Drive
Carson City, Nevada 89710
(702) 687-6007

84028
84028

Commissioners:
JOHN F. MENDOZA
Chairman

JO ANN KELLY
GALEN D. DENIO
JUDY M. SHELDRUP
DONALD L. SODERBERG



TIMOTHY HAY
Counsel
WILLIAM H. VANCE
Secretary

May 31, 1996

Item No. _____

Page Count 4

JUNE, 1996 #92

Vernon A. Williams, Secretary
Surface Transportation Board
1201 Constitution Avenue, N. W.
Washington, D. C. 20423

Re: Finance Docket No. 32760

Dear Mr. Williams:

Enclosed please find an original and twenty copies of the document entitled **LEGAL MEMORANDA OF THE PUBLIC SERVICE COMMISSION OF NEVADA** for filing in the above-referenced Docket.

Very truly yours,

Timothy Hay
TIMOTHY HAY, ESQ.
General Counsel

TH/md

Encls.

ENTERED Office of the Secretary	
JUN 05 1996	
5	Part of Public Record

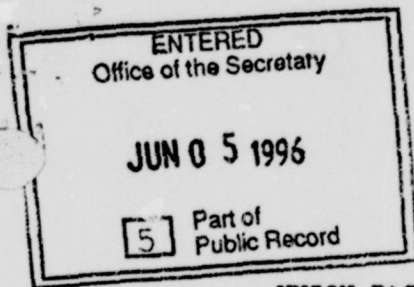
CONSUMER DIVISION:

Carson City/Reno—(702) 687-6000

Las Vegas—(702) 466-2600

Other Areas—800-992-0900, Ext. 87-6000

(O)-1626



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

Finance Docket No. 32760



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

LEGAL MEMORANDA OF THE
PUBLIC SERVICE COMMISSION OF NEVADA

The Public Service Commission of Nevada (PSCN), submits the following Legal Memoranda as an Interested Party in the proposed merger of the Union Pacific Railroad Company and the Southern Pacific Transportation Company and their subsidiaries in Finance Docket No. 32760.

I. INTRODUCTION.

The PSCN references and incorporates its comments filed in this docket dated March 29, 1996, as well as those dated May 3, 1996. The PSCN furthermore incorporates the attached comments of Frankie Sue Del Papa, State of Nevada Attorney General, filed with the Surface Transportation Board (STB) on or about May 8, 1996, and concurs with the City of Reno's Brief with regard to the legal arguments raised with respect to environmental impact issues and the environmental assessment performed in the context of Finance Docket No. 32760.

ARGUMENT

I. ANY EXCLUSIONARY AND DISCRIMINATORY PROVISIONS OF THE MERGER AND ASSOCIATED TRACKAGE RIGHTS AGREEMENTS WHICH PREVENT COMPETITIVE ACCESS FOR UTILITY FACILITIES ARE NOT IN THE PUBLIC INTEREST AND THEREFORE MUST BE ADDRESSED.

A primary interest of the PSCN is the impact the proposed merger will have on Nevada's energy suppliers. Lost competitive access for utilities must be adequately addressed before utilities, such as Sierra Pacific Power Company (SPPCo) and Nevada Power Company (NPC), are able to offer their resources in a cost effective manner. As previously noted in the PSCN's comments filed in March, 1996, the Merger Application does not sufficiently demonstrate that restricting single-line access through only the merged Union Pacific/Southern

Pacific (UP/SP) rail system to Utah coal sources is in the economic interests of SPPCo, Idaho Power Company, or their northern Nevada ratepayers. Furthermore, as Nevada's Attorney General argued, lost competition will not be meaningfully offset by the agreement between Union Pacific and the Burlington Northern/Santa Fe (BN/SF) granting BN/SF limited trackage rights in northern Nevada. (See May 8, 1996, comments of Nevada Attorney General Frankie Sue Del Papa, page 2).

The STB's action with regard to this merger should be consistent with the policies embraced by Congress in Public Law 104-88, Sec. 11324, subsection (c), which states that "[T]he Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities."

The STB must therefore condition the UP/SP merger to allow third party competing railroad operators, such as the Utah railway, to obtain nondiscriminatory trackage rights from the merger applicants. Congress explicitly authorized these conditions to eliminate anti-competitive conditions in the ICC Termination Act of 1995.¹

The issue of interchange traffic is another consideration the STB must take into consideration in determining whether adequate competition is being ensured in a post-merger environment. Nevada Northern Railway, having comparable access at Shafter, Nevada must be a consideration in any balancing test performed in a comparable access determination.

II. INCREASED RAIL TRAFFIC THROUGH NORTHERN NEVADA AND ITS RESULTANT IMPACTS ON THE ENVIRONMENT. TRAFFIC CONGESTION, SAFETY AND EMERGENCY RESPONSE PROBLEMS HAVE NOT BEEN ADEQUATELY MITIGATED AND THEREFORE MUST BE ADDRESSED BY THE MERGER APPLICANTS.

As the State agency having jurisdiction over railroad crossings and acting under certification for the Federal Railroad Administration for railroad safety issues, it is critical from the perspective of the PSCN that Reno's unique situation must be recognized by the STB and that sufficient conditions to mitigate the impact of substantially increased rail traffic on both the area's environment, as well as on traffic and safety related problems, be required in any order approving the merger.

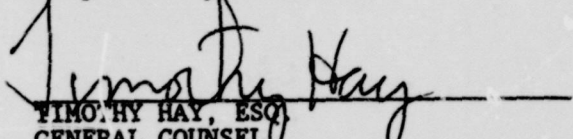
¹ See Conference Report on HR2539, Sec. 11324, page 191.

CONCLUSION

It is respectfully requested that the STB, in its evaluation of these issues, carefully consider the views of the PSCN, other State of Nevada agencies, Nevada municipalities, and Nevada public officials who have participated in these proceedings when rendering its judgment on the merits of the proposed merger.

DATED this 31st day of May, 1996.

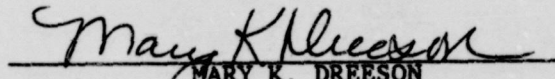
Respectfully submitted,

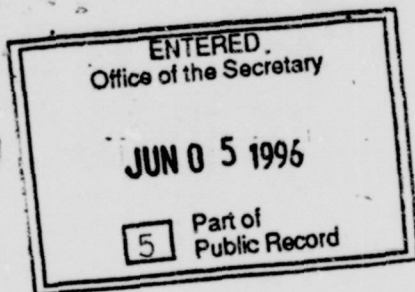

TIMOTHY HAY, ESQ.
GENERAL COUNSEL
PUBLIC SERVICE COMMISSION OF NEVADA
727 Fairview Drive
Carson City, NV 89710
Telephone: (702) 687-6006

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I certify that I have this day served copies of the document entitled **LEGAL MEMORANDA OF THE PUBLIC SERVICE COMMISSION OF NEVADA** upon parties in this proceeding, by first-class, postage pre-paid U.S. mail.

DATED this 31st day of May, 1996.


MARY K. DREESON



BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D. C.

Finance Docket No. 32760



UNION PACIFIC CORPORATION, UNION PACIFIC RAILROAD COMPANY,
AND MISSOURI PACIFIC RAILROAD COMPANY--CONTROL AND MERGER--
SOUTHERN PACIFIC RAIL CORPORATION, SOUTHERN PACIFIC
TRANSPORTATION COMPANY, ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
SPCSL CORP., AND THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

LEGAL MEMORANDA OF THE
PUBLIC SERVICE COMMISSION OF NEVADA

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ARGUMENT

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A primary interest of the PSCN is the impact the proposed merger will have on Nevada's energy suppliers. Lost competitive access for utilities must be adequately addressed before utilities, such as Sierra Pacific Power Company (SPPCo) and Nevada Power Company (NPC), are able to offer their resources in a cost effective manner. As previously noted in the PSCN's comments filed in March, 1996, the Merger Application does not sufficiently demonstrate that restricting single-line access through only the merged Union Pacific/Southern

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The STB's action with regard to this merger should be consistent with the policies embraced by Congress in Public Law 104-88, Sec. 11324, subsection (c), which states that "[T]he Board may impose conditions governing the transaction, including the divestiture of parallel tracks or requiring the granting of trackage rights and access to other facilities."

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As the State agency having jurisdiction over railroad crossings and acting under certification for the Federal Railroad Administration for railroad safety issues, it is critical from the perspective of the PSCN that Reno's unique situation must be recognized by the STB and that sufficient conditions to mitigate the impact of substantially increased rail traffic on both the area's environment, as well as on traffic and safety related problems, be required in any order approving the merger.

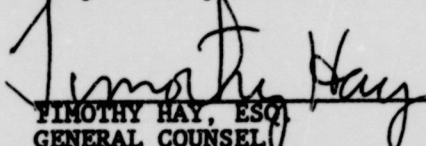
¹ See Conference Report on HR2539, Sec. 11324, page 191.

CONCLUSION

It is respectfully requested that the STB, in its evaluation of these issues, carefully consider the views of the PSCN, other State of Nevada agencies, Nevada municipalities, and Nevada public officials who have participated in these proceedings when rendering its judgment on the merits of the proposed merger.

DATED this 31st day of May, 1996.

Respectfully submitted,


TIMOTHY HAY, ESQ.
GENERAL COUNSEL
PUBLIC SERVICE COMMISSION OF NEVADA
727 Fairview Drive
Carson City, NV 89710
Telephone: (702) 687-6008

CERTIFICATE OF SERVICE

Pursuant to 49 C.F.R. § 1104.12, I certify that I have this day served copies of the document entitled **LEGAL MEMORANDA OF THE PUBLIC SERVICE COMMISSION OF NEVADA** upon parties in this proceeding, by first-class, postage pre-paid U.S. mail.

DATED this 31st day of May, 1996.


MARY K. DREESON

STB FD 32760 6-4-96 J 84026

84026

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

P.O. BOX 7566

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(202) 662-6000

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TELEX: 89-593 (COVLING WSH)

CABLE: COVLING

WRITER'S DIRECT DIAL NUMBER

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LECONFIELD HOUSE

CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 071-495-5655

TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

Item No. _____

Page Count 1 Plus Diskette
JUNE, 1996 #89

June 4, 1996

HAND DELIVERY

The Honorable Vernon A. Williams

Secretary

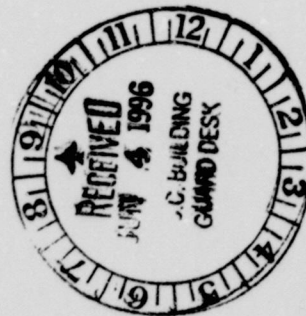
Surface Transportation Board

Room 2215

12th Street and Constitution

Avenue N.W.

Washington, D.C. 20423



Re: UP/SP Merger, Finance Docket No. 32760

Dear Mr. Williams:

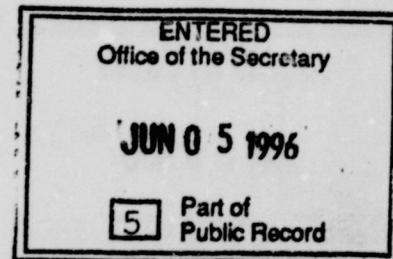
Enclosed for filing is a diskette in WordPerfect 5.1 format containing the text of pleadings filed by the FMC Corporation on June 3, 1996.

Sincerely,

Ann R. Homan

Ann R. Homan,
Transportation Specialist

Enclosures



STB FD 32760

6-4-96

J

84025

84025

COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE, N.W.

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TELEX: 89-593 (COVLING WSH)

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CURZON STREET

LONDON W1Y 8AS

ENGLAND

TELEPHONE: 071-495-5655

TELEFAX: 071-495-3101

BRUSSELS CORRESPONDENT OFFICE

44 AVENUE DES ARTS

BRUSSELS 1040 BELGIUM

TELEPHONE: 32-2-512-9890

TELEFAX: 32-2-502-1598

Item No. _____

(202) 662-5016

Page Count 1 Plus Diskette

5000 / 1450 # 88

June 4, 1996

HAND DELIVERY

The Honorable Vernon A. Williams

Secretary

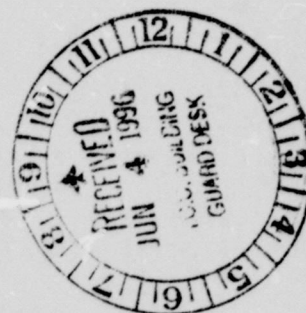
Surface Transportation Board

Room 2215

12th Street and Constitution

Avenue, N.W.

Washington, D.C. 20423



Re: UP/SP Merger, Finance Docket No. 32760

Dear Mr. Williams:

Enclosed for filing is a diskette in WordPerfect 5.1 format containing the text of pleadings filed by the Port of Portland on June 3, 1996.

Sincerely,

Ann Homan

Ann R. Homan,
Transportation Specialist

Enclosures

ENTERED	
Office of the Secretary	
JUN 05 1996	
5	Part of Public Record

STB FD

32760

6-4-96

J

84024

84024

HOPKINS & SUTTER

(A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS)

888 SIXTEEN .H STREET, N.W., WASHINGTON, D.C. 20006 (202) 835-8000
FACSIMILE (202) 835-8136

CHICAGO OFFICE THREE FIRST NATIONAL PLAZA 60602
DALLAS OFFICE 3700 BANK ONE CENTER 1717 MAIN STREET 75201



JAMIE PALTER RENNERT
(202) 835-8112

CN-8

June 4, 1996

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 1324
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Item No. _____

Page Count 2

JUNE, 1996 #93

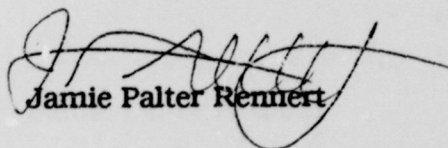
Re: Union Pacific Corp. et al. - Control & Merger -
Southern Pacific Rail Corp., et al. Finance Docket No. 32760

Dear Mr. Williams:

Enclosed please find an original and 20 copies of the Certificate of Service for the Brief of Canadian National Railway Company in Support of Primary Application (CN-7), which was inadvertently omitted from the Brief filed with the Board yesterday. Service of the Brief was in fact effected yesterday upon all parties of record as indicated in the Certificate.

Please date-stamp the extra copy of this letter and return it with our messenger.
Thank you.

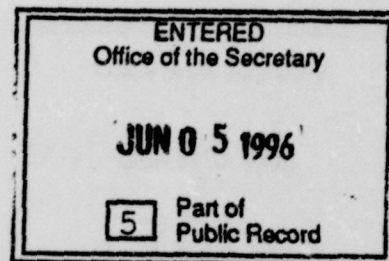
Sincerely,


Jamie Palter Rennert

Enclosures

cc: All Parties of Record

P46620-1



CERTIFICATE OF SERVICE

I hereby certify that on June 3, 1996, a copy of the foregoing Brief of Canadian National Railway Company in Support of Primary Application (CN-7) was served by first-class U.S. mail, postage prepaid upon all parties of record in this proceeding.

I further certify that two copies of the aforementioned pleading were served by Federal Express upon the following:

James V. Dolan
Paul A. Conley
Louise A. Rinn
Union Pacific Railroad Company
Missouri Pacific Railroad Company
1416 Dodge Street
Omaha, NE 68179

Cannon Y. Harvey
Southern Pacific Transportation Company
18609 Lincoln Street, 14th Floor
Denver, CO 80295

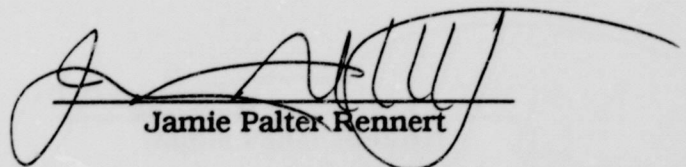
Cannon Y. Harvey
Louis P. Warchot
Carol A. Harris
Southern Pacific Railroad Company
One Market Plaza
San Francisco, CA 94105

I also certify that two copies of the aforementioned pleading were served by hand upon the following:

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566

Paul A. Cunningham
Richard B. Herzog
James M. Guinivan
Harkins, Cunningham
Suite 600
1300 Nineteenth Street, N.W.
Washington, D.C. 20036




Jamie Palter Rennert

STB

FD

32760

5-24-96

J

83783

Item No. _____

Page Count _____

may, 1996 # *144*

83783

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

May 24, 1996

OFFICE: (202) 371-9500

TELEPHONE: (202) 371-0900

VIA HAND DELIVERY

Honorable Vernon A. Williams, Secretary

Surface Transportation Board

Case Control Branch, Room 1324

12th St and Constitution Ave. N.W.

Washington, D.C. 20423



Re: Finance Docket No. 32760, *Union Pacific Corporation, et al.* -- Control & Merger
-- *Southern Pacific Rail Corporation, et al.*

Dear Secretary Williams:

Pursuant to Decision No. 36 of the Board served May 9, 1996, this is to advise that the undersigned, counsel for The National Industrial Transportation League ("League"), wishes to participate in the oral argument scheduled to be held in this proceeding on July 1, 1996.

The League opposes the proposed transaction unless conditions are granted that would alleviate its anticompetitive effects, and has asked the Board to impose conditions. The League intends to address the following issues:

- 1) The anticompetitive effects of the proposed transaction at points affecting substantial commerce, as well as in important corridors;
- 2) The failure of the BNSF settlement agreement, as further amended by the CMA settlement agreement, to mitigate the anticompetitive effects of the proposed transaction;
- 3) The failure of other forms of competition to mitigate those anticompetitive effects;
- 4) The appropriate conditions that should be imposed by Board to remedy the anticompetitive effects of the merger.
- 5) The importance of this proposed transaction in shaping rail markets and in establishing precedent for such transactions in the future;

The League requests 20 minutes to present its position.

Sincerely,

Nicholas J. DiMichael
NICHOLAS J. DI MICHAEL

cc: Restricted service list (via mail)

Office of the Secretary

MAY 28 1996

Part of
Public Record

STB

FD

32760

5-24-96

J

83781

83281

LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

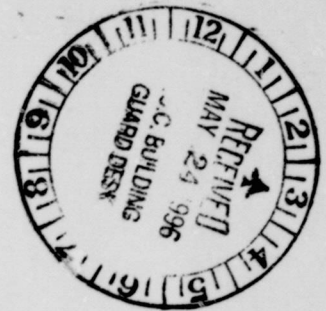
888 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE : (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316



MAY 28 1996

JAMES A. CALDERWOOD

SPP-16

May 24, 1996

Vernon A. Williams
Secretary
Surface Transportation Board
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Item No. _____

Page Count 1

May, 1996 #142

Re: Finance Docket No. 32760 Oral Argument

Dear Secretary Williams:

Sierra Pacific Power Company ("SPP") and Idaho Power Company ("IPC") hereby request that they be permitted to participate in the oral argument scheduled for July 1, 1996. SPP and IPC jointly own a power plant located at Valmy, Nevada. They have appeared in this proceeding, and would participate in oral argument, as one party.

SPP and IPC believe that the UP/SP merger should not be approved unless it is conditioned on certain conditions requested by SPP and IPC that are necessary to preserve rail competition available to the Valmy plant that the merger will eliminate.

The issue we would address at argument is whether the merger, as conditioned by the BN/Santa Fe settlement agreement, will eliminate rail competition now available to the Valmy plant. We believe that a brief oral presentation of this issue would substantially help the Board understand and resolve this issue.

SPP and IPC request 5 minutes speaking time. I anticipate that I would present the argument for SPP and IPC.

Sincerely,

James A. Calderwood
James A. Calderwood

cc: Official Service List

STB FD

32760

5-24-96

J

83780

83280

LAW OFFICES

ZUCKERT, SCOUTT & RASENBERGER, L.L.P.

888 SEVENTEENTH STREET, N.W.

WASHINGTON, D.C. 20006-3939

TELEPHONE : (202) 298-8660

FACSIMILES: (202) 342-0683

(202) 342-1316

Via Hand Delivery

May 24, 1996

Vernon A. Williams
 Secretary
 Surface Transportation Board
 Room 2215
 12th Street & Constitution Avenue, N.W.
 Washington, D.C. 20423

Re: Union Pacific Corp., Union Pacific RR. Co. and Missouri
 Pacific RR Co. -- Control and Merger -- Southern
 Pacific Rail Corp., Southern Pacific Transp. Co.,
 St. Louis Southwestern Rv. Co., SPCSL Corp. and The
 Denver and Rio Grande Western RR Co.,
Finance Docket No. 32760

Dear Secretary Williams:

Enclosed for filing are an original and twenty copies of TM-37, Supplemental Errata to the Rebuttal Statement in Support of the Responsive Application of the Texas Mexican Railway Company. Also enclosed is a 3.5" floppy computer disc containing a copy of the filing in Wordperfect 5.1 format.

Sincerely,

Richard A. Allen
 Richard A. Allen

Item No. _____

Page Count _____

May 1996 #145

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

Union Pacific Corp., Union Pacific)
 RR. Co. and Missouri Pacific RR Co.)
 -- Control and Merger -- Southern)
 Pacific Rail Corp., Southern)
 Pacific Trans. Co., St. Louis)
 Southwestern Rw. Co., SPCSL Corp.)
 and The Denver and Rio Grande)
 Western Corp.)

Finance Docket No. 32760

SUPPLEMENTAL ERRATA TO THE
REBUTTAL STATEMENT IN SUPPORT OF THE RESPONSIVE
APPLICATION OF THE TEXAS MEXICAN RAILWAY COMPANY

Errata to the Rebuttal Statement:

The Texas Mexican Railway Company ("Tex Mex"), hereby submits the following errata to the Rebuttal Statement which was contained in TM-34, Rebuttal in Support of the Responsive Application of the Texas Mexican Railway Company:

<u>Page</u>	<u>Line</u>	<u>Change</u>
6	- Note 2	Change "corporate parents of Tex Mex" to "corporate parents of Mexrail, Inc., which, in turn, is the corporate parent of Tex Mex"

Errata to the Verified Statement of Joseph F. Ellebracht:

Tex Mex hereby submits the following errata to the verified statement of Joseph F. Ellebracht which was contained in Tex Mex's Responsive Application (TM-25):

<u>Page</u>	<u>Line</u>	<u>Change</u>
2	1	Change "BNSF will" to "BNSF settlement will"
23	13	Change "market as BNSF has." to "market as SP has."
28	6	Change "that designed" to "that was designed"

Respectfully submitted,



Richard A. Allen

Andrew R. Plump

John V. Edwards

ZUCKERT, SCOUTT & RASENBERGER, LLP

888 Seventeenth Street, NW

Suite 600

Washington, DC 20006-3939

202/298-8660

Attorneys for Texas Mexican Railway

Dated: May 24, 1996

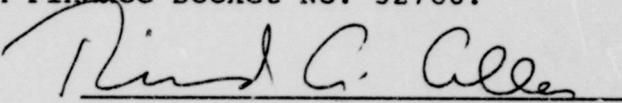
CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served the foregoing TM-37, "Supplemental Errata to the Rebuttal Statement in Support of the Responsive Application of the Texas Mexican Railway Company," by hand delivery upon the following persons:

Arvid E. Roach II
J. Michael Hemmer
Michael L. Rosenthal
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566

Paul A. Cunningham
Richard B. Herzog
James M. Guinavan
Harkins Cunningham
Suite 600
1300 Nineteenth Street, N.W.
Washington, D.C. 20036

I have also caused to be served by first-class mail, postage prepaid, or by a more expeditious manner of delivery, all persons on the official service list in Finance Docket No. 32760.


John V. Edwards
Zuckert, Scoutt
& Rasenberger, L.L.P.
Brawner Building
888 17th Street, N.W.
Washington, D.C. 20006-3959
(202) 298-8660

Dated: May 24, 1996

STB FD

32760

5-24-96

J

83773

Item No. _____

Page Count _____

May, 1996 # 152

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3934

OFFICE: MAY 23 1996
671-9500

TELECOPIER (202) 371-0900

May 24, 1996



Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, NW
Washington, D.C. 20423

Re: Finance Docket No. 32760;
Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Railroad Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company.

Dear Mr. Williams:

Pursuant to Decision No. 36 of the Board, served May 9, 1996, this letter is to advise the Board that the undersigned, counsel for The Dow Chemical Company ("Dow"), desires to participate in oral argument in this proceeding to be held on July 1, 1996.

Dow opposes the proposed transaction unless conditions are granted that would alleviate the merger's anticompetitive effects. Dow intends to address the following issues:

- 1) The existence of a viable build-out option from Dow's Freeport, Texas facilities to the SP;
- 2) The adverse "3 to 2" competitive effects of the merger upon Dow's build-out options at Freeport; and
- 3) The failure of other forms of competition to mitigate the anticompetitive effects of the merger upon Dow.

Dow requests 12 minutes to present its position.

Sincerely,

Nicholas J. DiMichael
Nicholas J. DiMichael
Jeffrey O. Moreno

1750-020

cc: Restricted Service List

STB FD

32760

5-24-96

J

83772

Item No. _____

Page Count 1

May, 1996 187

83772

DONELAN, CLEARY, WOOD & MASER, P.C.

ATTORNEYS AND COUNSELORS AT LAW

SUITE 750

1100 NEW YORK AVENUE, N.W.

WASHINGTON, D.C. 20005-3934

OFFICE: (202) 371-9500

TELECOPIER: (202) 371-0900

May 24, 1996

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
12th and Constitution Avenue, NW
Washington, D.C. 20423



Re: Finance Docket No. 32760;
Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company -- Control and Merger -- Southern Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and the Denver and Rio Grande Western Railroad Company.

Dear Mr. Williams:

Pursuant to Decision No. 36 of the Board, served May 9, 1996, this letter is to advise the Board that the undersigned, counsel for Kennecott Energy Company ("Kennecott"), desires to participate in oral argument in this proceeding to be held on July 1, 1996.

Kennecott opposes the proposed transaction unless conditions are granted that would alleviate the merger's anticompetitive effects upon Kennecott. Kennecott intends to address the following issues:

- 1) The merger's potential to eliminate geographic competition between Colorado coal and Powder River Basin coal; and
- 2) The competitive impact of the Utah Railway Agreement upon Kennecott's Colowyo Mine.

Kennecott requests 12 minutes to present its position.

Office of the Secretary

MAY 28 1996

Part of
Public Record

3760-020

Sincerely,

John K. Maser III
Jeffrey O. Moreno

cc: Restricted Service List

STB FD 32760.

5-24-96

J

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83771

Office of the Secretary

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

MAY 28 1996

Office of the Secretary

May 24, 1996

CPSB-7

202 347-7170

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

Pursuant to the STB's Decision No. 36 in the above-referenced proceeding, we request to participate in oral argument on behalf of City Public Service Board of San Antonio, Texas ("CPSB"). In response to the specific inquiries, we state as follows:

(A) The issue or issues CPSB will address. CPSB will address the adverse impact that the proposed merger will have on the transportation of coal to its Elmendorf, Texas Generating Facilities.

(B) Whether CPSB supports or opposes the primary application. CPSB opposes the primary application unless that application is conditioned in the manner set forth in CPSB's Comments.

(C) Speaking Time Desired. CPSB requests six (6) minutes to present its argument.

Item No. .2

Page Count 1

May, 1996 # 162

Sincerely,

John LeSeur

John H. LeSeur
An Attorney for City
Public Service Board of
San Antonio, Texas

JHL:mfw

cc: Arvid E. Roach II, Esq. (by hand delivery)
Paul A. Cunningham, Esq. (by hand delivery)
Parties of Record (by first class mail)

STB FD

32760

5-24-96

J

83770

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WILLIAM L. SLOVER
 C. MICHAEL LOFTUS
 DONALD G. AVERY
 JOHN H. LE SEUR
 KELVIN J. DOWD
 ROBERT D. POSENBERG
 CHRISTOPHER A. MILLS
 FRANK J. PERGOLIZZI
 ANDREW B. KOLESAR III
 PATRICIA E. KOLESAR
 EDWARD J. McANDREW*

Office of the Secretary
 MAY 28 1996

SLOVER & LOFTUS
 ATTORNEYS AT LAW
 1224 SEVENTEENTH STREET, N. W.
 WASHINGTON, D. C. 20036

ESI-23

May 24, 1996

202 347-7170

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

The Honorable Vernon A. Williams
 Secretary - Room 2223
 Surface Transportation Board
 12th Street & Constitution Avenue, N.W.
 Washington, D.C. 20423



Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

Entergy Services, Inc. and its affiliates Arkansas Power & Light Company and Gulf States Utilities company (collectively, "Entergy") request to participate, through their undersigned counsel, in the oral argument scheduled in this matter for July 1, 1996. Entergy will address the following issues: (i) the adverse impact of the merger on the transportation of coal to its White Bluff and Nelson power plants, (ii) the need to maintain Entergy's current competitive situation by preserving the benefits of build-outs from these plants, and (iii) the propriety of granting trackage rights in order to preserve such competition as a condition to the merger.

Entergy opposes the merger to the extent that it would reduce competition for its coal traffic, and supports its own responsive application for trackage rights. Entergy requests that it be permitted ten minutes to present its argument.

Respectfully submitted,

Christopher A. Mills
 An Attorney for Entergy Services,
 Inc., Arkansas Power & Light
 Company and Gulf States Utilities
 Company

Item No. _____
 Page Count 1
may 1996 153

CAM/mfw
 cc: Arvid E. Roach II, Esq.
 Paul A. Cunningham, Esq.
 Parties of Record

153

STB FD

32760

5-24-96

J

83769

Item No. _____
Page Count _____
May 1996 # 152

83749

SLOVER & LOFTUS
ATTORNEYS AT LAW
1224 SEVENTEENTH STREET, N. W.
WASHINGTON, D. C. 20036

TUE-16

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PEROLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

May 24, 1996

202 347-7170

* ADMITTED IN PENNSYLVANIA ONLY

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Case Control Branch
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

Pursuant to the STB's Decision No. 36 in the above-referenced proceeding, the undersigned requests to participate in oral argument on behalf of Texas Utilities Electric Company ("TU Electric"). In response to the specific inquiries, we state as follows:

(A) The issue or issues TU Electric will address. TU Electric will address the adverse impact that the proposed merger will have on the transportation of coal to its Martin Lake Generating Station.

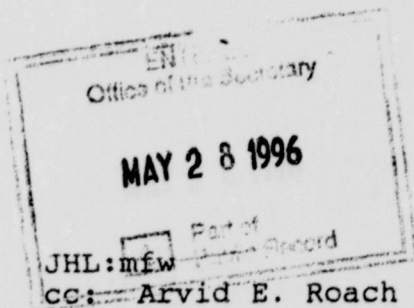
(B) Whether TU Electric supports or opposes the primary application. TU Electric opposes the primary application unless that application is conditioned in the manner set forth in TU Electric's Comments.

(C) Speaking Time Desired. TU Electric requests ten (10) minutes to present its argument.

Sincerely,

John H. LeSeur

John H. LeSeur
An Attorney for Texas
Utilities Electric Company



cc: Arvid E. Roach II, Esq. (by hand delivery)
Paul A. Cunningham, Esq. (by hand delivery)
Parties of Record (by first class mail)

STB FD 32760 5-24-96 J 83768

Item No. _____

Page Count _____

may, 1996 #163

C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PATRICIA E. KOLESAR
EDWARD J. McANDREW*

* ADMITTED IN PENNSYLVANIA ONLY

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

Office of the Secretary

MAY 28 1996

Part of
Record May 24, 1996

83768

202 347-7170

WCTL-21



BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2223
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

Pursuant to the Board's Decision No. 36 in the above-referenced proceeding, the undersigned requests to participate in oral argument on behalf of the Western Coal Traffic League ("WCTL"). In response to the Board's specific inquiries in Decision No. 36, we state as follows:

(A) Issues to be Addressed. WCTL will address the adverse impact that the proposed merger will have on the western coal transportation market in terms of both reduced competition and inadequate service for coal traffic. WCTL will also address the inadequacy of Applicants' settlement agreement with the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company as a remedy for its concerns regarding the anti-competitive effect of the merger on coal traffic.

(B) Support or Opposition for the Primary Application. WCTL opposes the primary application. If the application is ultimately approved by the Board, WCTL requests that it be conditioned in the manner set forth in its Comments, filed on March 29, 1996.

(C) Speaking Time Desired. WCTL requests ten (10) minutes to present its arguments.

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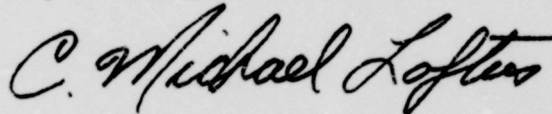
The Honorable Vernon A. Williams

May 24, 1996

Page 2

Thank you for your attention.

Respectfully submitted,

A handwritten signature in cursive script that reads "C. Michael Loftus".

C. Michael Loftus
An Attorney for the Western Coal
Traffic League

CML:raw

cc: Arvid E. Roach II, Esq. (by hand delivery)
Paul A. Cunningham, Esq. (by hand delivery)
Parties of Record (by first class mail)

STB FD

32760

5-24-96

J

83767

Item No. _____

Page Count _____

ma, 1996 #164

83767

WILMER, CUTLER & PICKERING

2445 M STREET, N.W.

WASHINGTON, D.C. 20037-1420

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FACSIMILE (202) 663-6363

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LONDON SW1Y 5AA
TELEPHONE 011 (44) 711 839-4466
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RUE DE LA LOI 15 WETSTRAAT
B-1040 BRUSSELS
TELEPHONE 011 (32) 231-0903
FACSIMILE 011 (32) 230-4322

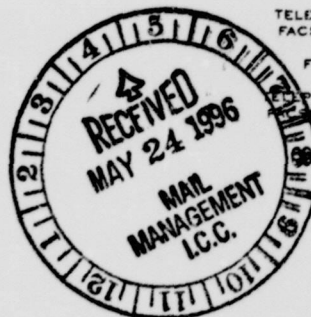
FRIEDRICHSTRASSE 95
D-10117 BERLIN
TELEPHONE 011 (49) 301 2022-6400
FACSIMILE 011 (49) 301 2022-6500

A. STEPHEN MUI, JR.
DIRECT (202) 663-6235
Office of the Secretary
663-6235
INTERNET: SHOT@WILMER.COM

MAY 28 1996

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May 24, 1996



CR-39

Mr. Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re. Finance Docket No. 32760, Union Pacific
Corporation, et al. -- Control and Merger --
Southern Pacific Rail Corporation, et al.

Dear Secretary Williams:

Pursuant to Decision No. 36 (May 9, 1996), Consolidated Rail Corporation ("Conrail") respectfully advises the Surface Transportation Board ("Board") that Conrail wishes to participate in the oral argument scheduled in this proceeding for July 1, 1996, and further provides the information requested in Decision No. 36 as follows:

Conrail's position concerning the primary application and requests for conditions. Conrail opposes the proposed merger unless approval is conditioned on divestiture of lines and facilities in the eastern portion of SP's network (described by Conrail as SP East, and defined with particularity in Conrail's March 29, 1996 filing).

Issues Conrail would expect to address. Conrail will focus its argument on (a) competitive harms that the merger as proposed would produce in the SP East region and that are not offset by merger-created efficiencies in that region; (b) operating and other disabilities establishing that Applicants' trackage rights agreement with Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BNSF") would not allow BNSF to remedy those anticompetitive harms or effectively replace the competitive role played by SP today in that region; and (c) reasons why divestiture of SP East lines is the only form of relief that could provide an adequate remedy and be consistent with the public interest.

Speaking time. Conrail agrees with the Response of Interested Parties to Motion of Western Shippers Coalition for

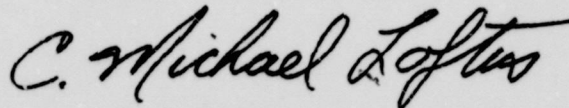
The Honorable Vernon A. Williams
May 24, 1996
Page 2

assignment or grant of trackage rights over BNSF lines from Kansas City to Chicago, Illinois to an independent carrier; and (ii) a service protection condition which precludes the consolidation until Applicants can certify to the Board that they are in compliance with service guarantees to which they are bound by contract. These conditions are discussed more fully in the Joint Comments filed by WPS/WPL on March 29, 1996.

(C) Speaking Time Desired. WPL and WPS request five (5) minutes to present their arguments.

Thank you for your attention.

Respectfully submitted,



C. Michael Loftus
An Attorney for Wisconsin Power &
Light Company and Wisconsin Public
Service Corporation

CML:raw

cc: Arvid E. Roach II, Esq. (by hand delivery)
Paul A. Cunningham, Esq. (by hand delivery)
Parties of Record (by first class mail)

STB FD

32760

5-24-96

J

83765

Item No. _____

Page Count _____

May 1996 #166

83765

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER

C. MICHAEL LOFTUS

DONALD G. AVERY

JOHN H. LE SEUR

KELVIN J. DOWD

ROBERT D. ROSENBERG

CHRISTOPHER A. MILLS

FRANK J. PERGOLIZZI

ANDREW B. KOLESAR III

PATRICIA E. KOLESAR

EDWARD J. McANDREW*

Office of the Secretary

MAY 28 1996

* ADMITTED IN PENNSYLVANIA ONLY

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202 347-7170

WPL-11

WPS-11

May 24, 1996

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Room 2223
1201 Constitution Avenue, N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

Pursuant to the Board's Decision No. 36 in the above-referenced proceeding, the undersigned requests to participate in oral argument on behalf of Wisconsin Power & Light Company ("WPL") and Wisconsin Public Service Corporation ("WPS").

In response to the Board's specific inquiries in Decision No. 36, we state as follows:

(A) Issues to be Addressed. WPL and WPS will address the adverse impact that the proposed merger will have on the western coal transportation market in terms of (i) the elimination of Uinta Basin bituminous coal as a competitive force and (ii) the deterioration in the quality of unit train coal transportation service over UP's central east-west corridor. WPL and WPS will also address the inadequacy of Applicants' settlement agreement with the Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company ("BNSF") as a remedy for their concerns regarding the anti-competitive effect of the merger on coal traffic.

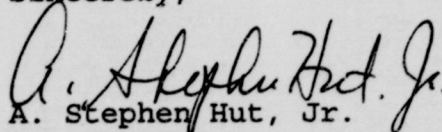
(B) Support or Opposition for the Primary Application. WPL and WPS oppose the primary application unless it is conditioned upon (i) divestiture of certain SP lines between Provo, Utah and Kansas City, Kansas/Missouri, in conjunction with an

Mr. Vernon A. Williams
May 24, 1996
Page 2

Clarification or Reconsideration of Decision No. 36, which urges the Board not to allocate time to individual parties at this time. Numerous opposing parties (including Conrail) have met in an effort to develop an agreed-on allocation of time among themselves; have agreed to meet again to that end in light of the May 24 submissions; and to advise the Board by June 7 of those discussions. If agreement on time allocation were reached, Conrail would urge the Board to endorse it.

Should no such agreement be reached, however, and for purposes of providing the Board with the information sought in Decision No. 36, Conrail at this time respectfully urges the Board -- in light of the substantial role Conrail has played in addressing the need for SP East divestiture -- to grant it 15 minutes of speaking time during the oral argument.

Sincerely,


A. Stephen Hut, Jr.

Counsel for Consolidated
Rail Corporation

cc: All Parties of Record

STB FD

32760

5-24-96

J

83764

Item No. _____

Page Count _____

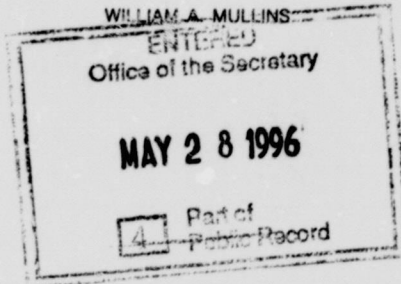
May 1996 # 167

83764.

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

1300 I STREET, N.W.
SUITE 500 EAST
WASHINGTON, D.C. 20005-3314
TELEPHONE: 202-274-2950
FACSIMILE: 202-274-2994

DIRECT: 202-274-2953



May 24, 1996



KCS-56

HAND DELIVERED

Mr. Vernon A. Williams
Surface Transportation Board
Case Control Branch
Room 2215
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760, Oral Argument

Dear Secretary Williams:

The Kansas City Southern Railway Company ("KCS") hereby requests permission to participate in oral argument on Monday July 1, 1996. Pursuant to the Board's Decision No. 36, KCS shows:

- (a) The issues KCS will raise include the harms to competition resulting from this merger and the ineffectiveness of the BN/Santa Fe settlement agreement as a solution to those harms; and KCS's proposed solution to the competitive harms
- (b) KCS Opposes the primary petition. KCS agrees with some of the positions asserted by other parties in their responsive applications and comments, and it disagrees with others.
- (c) KCS requests 20 minutes for argument.

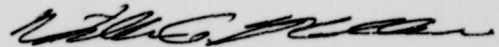
Finally, KCS reiterates its request filed jointly with other parties on May 21, 1996 (KCS-55, TVE-15, NITL-18, et al) that the Board clarify Decision 36 as to the total time to be allowed to parties opposing the merger and that the Board delay until at least June 7, 1996 its

TROUTMAN SANDERS LLP
ATTORNEYS AT LAW
A LIMITED LIABILITY PARTNERSHIP

Vernon A. Williams
May 24, 1996
Page 2

determination of the time to be allocated to each party in order to allow the parties opposing the merger to agree upon an allocation of time.

Sincerely,



William A. Mullins
Attorney for The Kansas City Southern
Railway Company

cc: Parties of Record

STB FD

32760

5-24-96

J

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ENTERED
Office of the Secretary

MAYER, BROWN & PLATT

2000 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20006-1882

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TELEX 892603
FACSIMILE
202-861-0473

MAY 28 1996

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HOUSTON
LONDON
LOS ANGELES
NEW YORK
MEXICO CITY CORRESPONDENT
JAUREGUI, NAVARRETE, NADER Y ROJAS

ERIKA Z. JONES
202-778-0642

May 24, 1996

VIA HAND DELIVERY

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., NW
Washington, DC 20423



Re: Finance Docket No. 32760
Request to Participate In Oral Argument

Dear Secretary Williams

Pursuant to Decision No. 36, served in this proceeding on May 9, 1996, Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company (collectively, "BN/Santa Fe") request the opportunity to participate in the oral argument scheduled by the Surface Transportation Board for July 1, 1996, in this proceeding.

BN/Santa Fe will address the adequacy of the settlement agreements entered into between the Applicants and BN/Santa Fe (including the agreement entered into between the Applicants, BN/Santa Fe and the Chemical Manufacturers Association ("CMA")) to alleviate the competitive harms that would otherwise occur if the proposed merger of Union Pacific and Southern Pacific were approved without conditions.

BN/Santa Fe takes no position on whether the proposed merger should be approved. However, if the Board determines to approve the merger, BN/Santa Fe urges the Board to condition the merger on the settlement agreements entered into between the Applicants and BN/Santa Fe. With respect to the responsive applications and conditions sought by other parties, BN/Santa Fe opposes the relief sought by Tex Mex, Montana Rail Link, KCS, Conrail and others opposing the BN/Santa Fe Settlement Agreements.

Item No. _____

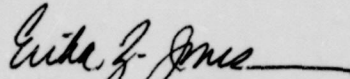
Page Count 2

May, 1996 #168

Honorable Vernon A. Williams
May 24, 1996
Page 2

BN/Santa Fe requests twenty (20) minutes speaking time to
present its position.

Sincerely,


Erika L. Jones

cc: All parties of record

STB FD 32760 5-24-96 J 83762

83762

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MAY 28 1996
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Public Record

LAW OFFICES
GORDON P. MACDOUGALL
1025 CONNECTICUT AVE., N. W.
WASHINGTON, D. C. 20036

TELEPHONE
AREA CODE 202
223-9738

May 24, 1996



Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Connecticut Ave., N.W.
Washington, DC 20423

Re: Finance Docket No. 32760
Union Pacific Corporation, et al.-Control & Merger-
Southern Pacific Rail Corporation, et al.

Dear Mr. Williams:

This letter is in response to the Board's decision, served May 9 (No. 36) regarding oral argument, and is made on behalf of Joseph C. Szabo (UTU-IL Leg. Board), John D. Fitzgerald (UTU-BN Gen. Committee), Clarence R. Ponsler (UTU-Alton & Southern Gen. Committee), and Charles W. Downey (UTU-SPCSL, Gateway Western, and Illinois Central Gen. Committees).

A total reservation of 10 minutes is requested; however, until the briefs of the many parties are filed, and reviewed, it is unclear whether and to what extent oral argument will actually be necessitated. It may be that this request will be withdrawn.

Decision No. 36 refers to a similar oral argument decision served June 13, 1995 in F.D. No. 32549. (Decision No. 36, fn.3). Such conditional request for oral argument time was made by two of the entities named in the first paragraph on June 13, 1995 in that case.

Briefs are due June 3, and after three working days (the usual period when briefs are available in the public docket room), or on June 7, I will advise by letter in this regard.

If argument is made, it will address issues presented in the briefs of these protestants.

Very truly yours,

Gordon P. MacDougall

Item No. _____
Page Count _____
May, 1996 #169

STB FD 32760 5-24-96 J 83739

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Office of the Secretary

MAY 24 1996

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LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE-SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

May 23, 1996

By UPS Overnight

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



Dear Mr. Williams:

This is to request oral argument time on July 1 in the UP-SP merger case as follows:

- (1) 15 minutes in behalf of Wisconsin Electric Power Company in support of its Responsive Application in the Sub-No. 16 proceeding. This likely will be the only argument in behalf of that Responsive Application; and
- (2) 15 minutes in behalf of Mountain-Plains Communities & Shippers Coalition and Colorado Wheat Administrative Committee in opposition to the merger unless conditioned as requested in the Responsive Application of Montana Rail Link, Inc. in the Sub-No. 11 proceeding; and
- (3) 10 minutes in behalf of Springfield Plastics, Inc. and Brandt Consolidated, Inc. in opposition to the Barr-Girard, IL abandonment proposed in related Docket No. AB-33 (Sub-No. 96).

Twenty copies accompany the original of this request. All parties of record are being served.

Item No. _____

Page Count _____

May 1996 #161

Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for above-named parties

cc: All parties
Gerry Abood
Steve Baker
Charles Chimento
Junior Strecker

STB

FD

32760

5-24-96

J

83738

MAY 2 1996

LAW OFFICES
McFARLAND & HERMAN
20 NORTH WACKER DRIVE-SUITE 1330
CHICAGO, ILLINOIS 60606-2902
TELEPHONE (312) 236-0204
FAX (312) 201-9695

83738 ORIGINAL

THOMAS F. McFARLAND, JR.

STEPHEN C. HERMAN

May 23, 1996

By UPS Overnight

Vernon A. Williams, Secretary
Surface Transportation Board
U.S. Department of Transportation, Rm. 1324
12th & Constitution Avenue, NW
Washington, DC 20423



Dear Mr. Williams:

This is to request oral argument time on July 1 in the UP-SP merger case as follows:

- (1) 15 minutes in behalf of Wisconsin Electric Power Company in support of its Responsive Application in the Sub-No. 16 proceeding. This likely will be the only argument in behalf of that Responsive Application; and
- (2) 15 minutes in behalf of Mountain-Plains Communities & Shippers Coalition and Colorado Wheat Administrative Committee in opposition to the merger unless conditioned as requested in the Responsive Application of Montana Rail Link, Inc. in the Sub-No. 11 proceeding; and
- (3) 10 minutes in behalf of Springfield Plastics, Inc. and Brandt Consolidated, Inc. in opposition to the Barr-Girard, IL abandonment proposed in related Docket No. AB-33 (Sub-No. 96).

Twenty copies accompany the original of this request. All parties of record are being served.

Very truly yours,

Tom McFarland

Thomas F. McFarland, Jr.
Attorney for above-named parties

cc: All parties
Gerry Abood
Steve Baker
Charles Chimento
Junior Strecker

STB FD 32760

5-24-96

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83736

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

Item No. _____

ORIGINAL

May 23, 1996

Page Count _____

May, 1996 #160Via Federal Express

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Avenue, N.W.
Washington, D.C. 20423

Re: Finance Docket No. 32760 Oral Argument

Dear Secretary Williams:

In response to Decision No. 36, this is to inform you that the California Public Utilities Commission (CPUC) wishes to participate in the Oral Argument scheduled for July 1, 1996.

The CPUC intends to address a number of issues that it considers important to California, including that of securing and maintaining effective competition, obtaining a second Class 1 interconnection for the Northwestern Pacific Railroad, and preserving the Modoc Line.

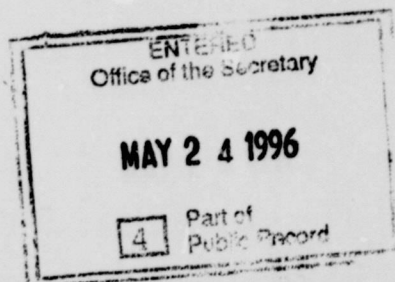
The CPUC supports the primary application and estimates that it will require approximately 15 minutes for the presentation of its argument.

Sincerely,

James T. Quinn
Counsel for the CPUC

JTQ:nas

cc: All parties



STB FD 32760

5-24-96

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Item No. _____

Page Count _____

May 1996 # 159

83735

CHARLES H. MONTANGE

ATTORNEY AT LAW

426 NW 162ND STREET

SEATTLE, WASHINGTON 98177

(206) 546-1936

FAX: (206) 546-3739



MAY 24 1996

Part of
Public Record

23 May 1996
by Federal Express

Hon. Vernon A. Williams
Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., NW
Washington, D.C. 20423

Re: Union Pacific -- merger -- Southern Pacific,
Finance Dkt. No. 32760, oral argument

Dear Secretary Williams:

Rails to Trails Conservancy (RTC), a party in the above-referenced proceeding, hereby requests an opportunity to participate in oral argument. As provided in Decision No. 36 in this proceeding, RTC states as follows:

1. Issue(s) to be addressed: (a) importance of preserving otherwise-to-be abandoned rail corridors in the public interest; (b) propriety of conditions sought by RTC and Madison County Transit to enhance preservation of such rail corridors; and (c) inadequacy of the environmental assessment in the absence of such conditions.

2. Position on application/responsive applications and conditions. RTC's current position is neutrality on the application provided conditions which it has requested are imposed.

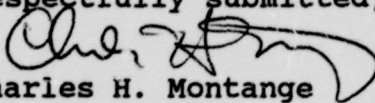
3. Speaking time desired. In recognition of the many parties to the proceeding, RTC requests only five (5) minutes to state its position.

So far as RTC is aware, RTC will be the only party specifically addressing the public interest in retaining otherwise to be abandoned rail corridors for railbanking and interim trail use purposes. RTC expects to present a position consonant with that of the environmental community.

RTC expects to present oral argument through Andrea

Ferster, Esq., RTC's General Counsel, resident in Washington,
D.C. Her telephone number is 202-797-5427.

Respectfully submitted,


Charles H. Montange
counsel for Rails to Trails
Conservancy

Of Counsel:

Andrea Ferster
Rails to Trails Conservancy
1400--16th St., N.W., #300
Washington, D.C. 20036

STB FD

32760

5-24-96

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Item No. _____
Page Count _____
May, 1996 # 158

1201 NEW YORK AVENUE, N.W.
WASHINGTON, D.C. 20005-3919

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SURFACE TRANSPORTATION
BOARD
MAY 24 12 26 PM '96
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OFFICE OF SECRETARY
(202) 789-3400
FAX (202) 789-1155

KECK, MAHIN & CATE

FILE NUMBER 48189-001
DIRECT DIAL 202-789-8931

May 24, 1996

Honorable Vernon A. Williams
Secretary
Room 2223
Surface Transportation Board
1201 Constitution Ave., N.W.
Washington, D.C. 20423

Re F.D. No. 32760 UP/SP Merger
(Oral Argument)

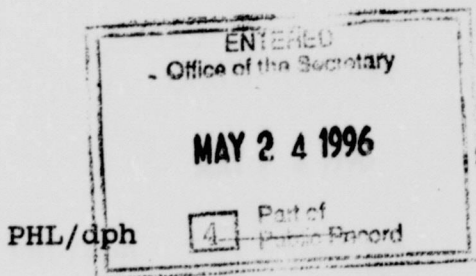
Dear Mr. Secretary:

In accordance with Decision No. 36, served May 9, 1996, the City of Reno here requests opportunity to participate in oral argument, now scheduled for July 1, 1996.

The City of Reno takes no position on the merits of the merger, but wishes to address (1) the significant adverse impact that the proposed merger operations will have on the public health, safety and environment of the City its citizens, and the Reno/Sparks/Truckee Meadows Basin, (2) why an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA) and a "conformity determination" under the Clean Air Act (CAA) are essential and required, and (3) what mitigation measures are appropriate.

The City requests not more than five (5) minutes time for presentation.

Very truly yours,



Paul H. Lamboley

A LAW PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO, ILLINOIS HOUSTON, TEXAS LOS ANGELES, CALIFORNIA NEW YORK, NEW YORK
PEORIA, ILLINOIS SAN FRANCISCO, CALIFORNIA OAKBROOK TERRACE, ILLINOIS SCHAUMBURG, ILLINOIS

STB FD

32760

5-24-96

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Item No. _____
Page Count 1.
May 1996 # 143

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LECONFIELD HOUSE
CURZON STREET
LONDON W1Y 8AS
ENGLAND

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TELEFAX: 44-171-495-3101

BRUSSELS CORRESPONDENT OFFICE
44 AVENUE DES ARTS
BRUSSELS 1040 BELGIUM
TELEPHONE: 32-2-512-9890
TELEFAX: 32-2-502-1596

ARVID E. ROACH II

DIRECT DIAL NUMBER

(202) 662-5388

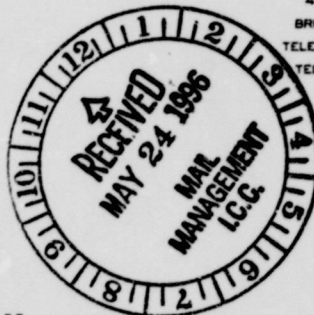
DIRECT TELEFAX NUMBER

(202) 778-5388

May 24, 1996

BY HAND

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
Twelfth Street and Constitution Ave., N.W.
Washington, D.C. 20423



Re: Finance Docket No. 32760, Union Pacific
Corp., et al. -- Control & Merger -- Southern
Pacific Rail Corp., et al.

Dear Secretary Williams:

This letter responds to the Board's Decision No. 36,
served May 9, 1996, regarding oral argument in the above-
captioned proceeding, to be held on July 1, 1996.

The primary Applicants wish to participate in the oral
argument to address the reasons why the primary application, as
conditioned by Applicants' settlement agreement with BN/Santa Fe,
should be approved, and the responsive applications and requests
for conditions should be denied.

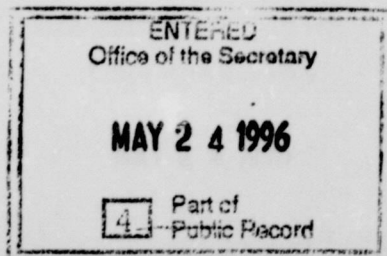
Applicants request 90 minutes of the four hours the
Board has allocated for oral argument for their presentation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arvid E. Roach II".

Arvid E. Roach II

cc: All Parties of Record



STB FD

32760

5-24-96

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LAROE, WINN, MOERMAN & DONOVAN

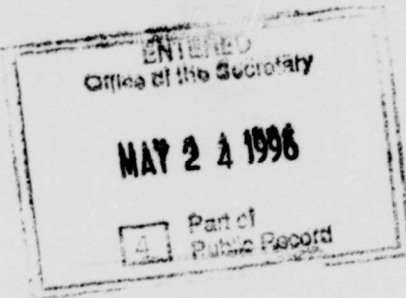
ATTORNEYS AT LAW

3506 IDAHO AVENUE, N. W.

WASHINGTON, D. C. 20018

TELEPHONE (202) 362-3010

FAX (202) 362-3050



May 23, 1996

BY HAND

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
Twelve Street and Constitution Avenue, N.W.
Room 2215
Washington, DC 20423

Re: Finance Docket No. 32760 oral argument

Dear Secretary Williams:

Pursuant to the Board's Decision No. 36, the undersigned hereby requests, on behalf of The Geon Company, to participate in the oral argument in the above-captioned proceeding scheduled for Monday, July 1, 1996.

Geon will address those issues arising from what it believes to be the substantial anti-competitive effects of the proposed merger and the negative impact that the proposed merger would have on the public interest.

Geon opposes the merger. Geon's position is that only the divestiture of the Southern Pacific lines between the Mexican Border and Chicago, on the one hand, and between Houston and New Orleans on the other, can cure the anti-competitive effects of the merger.

At the present time, Geon believes that five (5) minutes will be sufficient to present its argument to the Board. However, Geon agrees with the Response of the National Industrial Transportation League et al. that the Board should postpone a decision on how to allocate the argument time of those opposing the merger pending a report from interested parties on June 7, 1996.

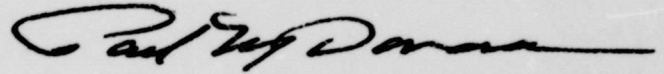
Item No. _____

Page Count 2

May, 1996 # 155

LAROE, WINN, MOERMAN & DONOVAN

Very truly yours,

A handwritten signature in cursive script, appearing to read "Paul M. Donovan", with a long horizontal flourish extending to the right.

Paul M. Donovan
Attorney for The Geon Company

cc: All Parties of Record

STB FD 32760 5-24-96 J 83730

83730

ORIGINAL

Office of the Secretary

MAY 24 1996

MCCARTHY, SWEENEY & HARKAWAY, P. C.

1750 PENNSYLVANIA AVE., N. W.

WASHINGTON, D. C. 20006

TELEPHONE (202) 393-5710

TELECOPIER (202) 393-5721

May 24, 1996

ANDREW P. GOLDSTEIN
CounselCHARLES J. MCCARTHY
CounselPart of
DOUGLAS M. GANTER Record
JOHN M. CUTLER, JR.
WILLIAM I. HARKAWAY
STEVEN J. KALISH
HARVEY L. REITER
DANIEL J. SWEENEY
KATHLEEN L. MAZURE

Vernon A. Williams, Secretary
Room 2223
Surface Transportation Board
1201 Constitution Avenue, NW
Washington, D.C. 20423

Re: Finance Docket No. 32760 Oral Argument

Dear Secretary Williams:

Pursuant to Decision No. 36, served May 9, 1996, Sedgwick County, Kansas and the City of Wichita, Kansas hereby submit their request to participate in the oral argument to be held on July 1, 1996. In support of this request, and as required by Decision No. 36, Sedgwick County and Wichita state as follows.

(a) Issues To Be Addressed

The principal issue to be addressed by Sedgwick County and Wichita is the environmental degradation that would result directly from Surface Transportation Board approval of the so-called "Kansas City Bypass Routes" proposed by the applicants.

The Commission's April 12, 1996 Environmental Assessment has asserted that the proposed merger, which contemplates the Kansas City Bypass Routes, i.e., the rerouting of at least ten unit trains of coal and grain away from Kansas City and through Wichita and Sedgwick County, would not significantly affect the quality of the human environment. In contrast, Wichita and Sedgwick County will argue not only that the environmental degradation resulting from the applicants' proposal is so severe as to mandate the creation of an Environmental Impact Statement, we also will argue that the proposed rerouting must be prohibited by the Board.

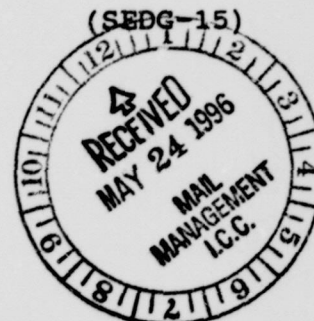
(b) Support Or Opposition

Given that the primary application contemplates the Kansas City Bypass routes, Sedgwick County and Wichita have no choice but to oppose that application. If the Commission prohibits the applicants from increasing the daily amount of rail traffic through Sedgwick County and Wichita, we will withdraw our opposition.

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(c) Time Requested

Sedgwick County and Wichita request seven minutes of oral argument time, the approximate amount of time that each of the applicants' proposed 16 trains per day would block the streets of Wichita, prohibiting passage of all motor vehicles, including all emergency service vehicles.

Respectfully submitted,

Sedgwick County, Kansas
City of Wichita, Kansas

By: 
Steven J. Kalish

Their Attorney

cc: All Parties

STB FD 32760 5-24-96 J 83728

83728

LAW OFFICES
HIGHSAW, MAHONEY & CLARKE, P.C.
SUITE 210

1050 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20036
202-296-8500
TELECOPIER (202) 296-7143

JAMES L. HIGHSAW
1970 - 1992

ARU-16

WILLIAM G. MAHONEY
JOHN O.B. CLARKE, JR.
RICHARD S. EDELMAN
L. PAT WYNNS
DONALD F. GRIFFIN
MELISSA B. KIRGIS
FRANCISCO J. RUBEN*

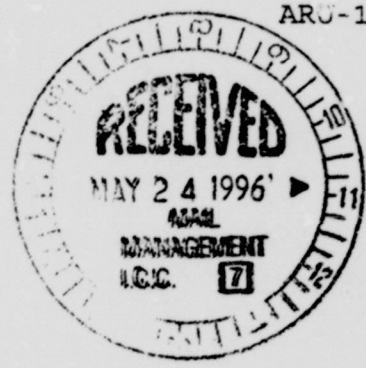
Office of the Secretary

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*ADMITTED IN MARYLAND ONLY

May 24, 1996



By Hand Delivery

Vernon Williams, Secretary
Surface Transportation Board
1201 Constitution Ave., N.W.
Room 2223
Washington, D.C. 20423

Re: Finance Docket No. 32760 Oral Argument

Dear Mr. Williams:

Pursuant the Board's Order No. 36 in the above-referenced matter, the "Allied Rail Unions" (American Train Dispatchers Department/BLE, Brotherhood of Maintenance of Way Employees and the Brotherhood of Railroad Signalmen) hereby notify the Board that they wish to participate in the oral argument scheduled for July 1, 1996 through their counsel: Highsaw, Mahoney & Clarke, P.C. (at this point it is anticipated that argument will be presented by Richard S. Edelman).

In connection with this request to address the Board at the July 1 argument, the ARU reaffirm that they oppose the primary application and the responsive application of Montana Rail Link. Counsel for the ARU currently plans to discuss their general opposition to the primary application, as well as their requests in the alternative for imposition of certain conditions if the primary application is approved as is described in their March 29 Comments, particularly: 1) the need for a limitation on the scope of application of any Section 11341(a) immunity that would attach to an approval of the primary application, 2) the necessity for imposition of New York Dock conditions on the UP/SP--BNSF trackage rights deal, or for modification of the Norfolk & Western conditions if they are imposed to provide for

Item No. _____

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May, 1996 # 139

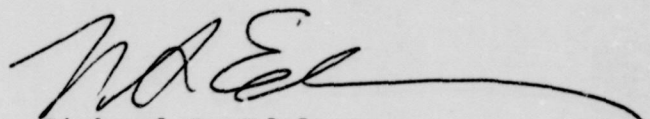
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Vernon Williams, Secretary
Surface Transportation Board

May 24, 1996
Page 2

an umbrella type implementing arrangement, 3) the necessity for a condition that the track and signal construction and rehabilitation work to be done in connection with the transaction be done by bargaining unit employees rather than by contractors, 4) a requirement that if the carriers are to obtain the benefit of modifications of collective bargaining agreements for the creation of uniform agreements, the unions should have the countervailing right of approval of any such modifications and 5) the necessity for ongoing reporting by the Applicants as to their actual attainment of forecast benefits of the transaction and as to their sharing of such benefits. The ARU request fifteen (15) minutes of argument time on July 1. In support of this request the ARU note that 15 minutes is necessary for their counsel to address the issues described above and that while carrier, shipper and public agency parties will be seeking time to present argument, many of them will be addressing similar concerns, whereas the concerns of labor in opposition to the transaction will be limited to the ARU which has requested 15 minutes of argument time and the Transportation Communications Union which has requested 5 minutes of argument time.

Respectfully submitted,



Richard S. Edelman

STB FD

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5-24-96

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Item No. _____

Page Count 1

May, 1996 / 38

Graham & James LLP

83727

May 24, 1996

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Office of the Secretary
Surface Transportation Board
Room 2223
1201 Constitution Avenue, NW
Washington DC 20423

RE: Finance Docket No. 32760 -- Oral Argument

Dear Secretary Williams:

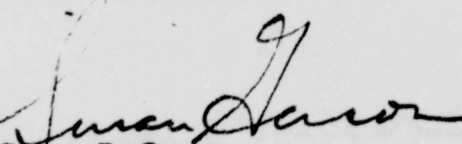
Pursuant to Decision No. 36, the East Bay Regional Park District ("District"), by and through its attorneys, **Graham & James LLP**, wishes to participate in oral argument in this proceeding on Monday, July 1, 1996, at 10:00 a.m., in Hearing Room A at the Surface Transportation Board.

The District respectfully requests five minutes speaking time for oral argument to address environmental issues. The District at this time takes no position on the primary application or on responsive applications. However, the District does take the position that its requests for conditions are necessary.

Thank you for your consideration in this matter.

Very truly yours,

GRAHAM & JAMES LLP

By 
Susan B. Gerson

Attorneys for East Bay
Regional Park District



A California Registered
Limited Liability Partnership
Including Professional
Corporations

Attorneys

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Fax (202) 463 0823

Direct tel
(202) 833-0851

Internet
sgerson@gj.com

Graham & James LLP

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Beijing
Tokyo
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London
Milan

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& James**

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